

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





76-1177

*RB*

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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DOCKET NO. 76-1177

---

UNITED STATES OF AMERICA

APPELLEE

VS.

WILLIAM EUGENE ROBINSON

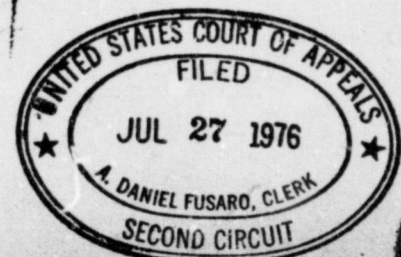
APPELLANT

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APPENDIX TO BRIEF OF APPELLANT  
WILLIAM EUGENE ROBINSON

---

GREGORY B. CRAIG  
COUNSEL FOR APPELLANT  
30 SOUTH STREET  
MIDDLEBURY, VERMONT  
05753



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DISTRICT OF CONNECTICUT

U. S. DISTRICT COURT  
NEW HAVEN, CONN.

UNITED STATES OF AMERICA :

V. :

CRIMINAL NO. N-75-20

WILLIAM EUGENE ROBINSON :  
a/k/a WILLIE GENE ROBINSON :  
a/k/a PONZO and :  
DAVID JAMES TATE :

RECEIVED

MAR 13 1975

OFFICE OF THE FEDERAL  
PUBLIC DEFENDER, N.H.

INDICTMENT

The Grand Jury Charges:

COUNT I

On or about the 18th day of February 1975, in the District of Connecticut, WILLIAM EUGENE ROBINSON, a/k/a Willie Gene Robinson, a/k/a Ponzo and DAVID JAMES TATE, by force and violence and by intimidation, did take from the person and presence of Retta Mondulick about \$2,034.00 in money, belonging to and in the care, custody, control, management and possession of the Connecticut National Bank, the deposits of which were then insured by the Federal Deposit Insurance Corporation.

In violation of 18 U.S.C. 2113(a) and 2(a) and 2(b).

COUNT II

On or about the 18th day of February 1975, in the District of Connecticut, WILLIAM EUGENE ROBINSON, a/k/a Willie Gene Robinson, a/k/a Ponzo and DAVID JAMES TATE, did take and carry away, with intent to steal and purloin, from the Connecticut National Bank, the deposits of which were then insured by the Federal Deposit Insurance Corporation, the sum of about \$2,034.00 belonging to and in the care, custody, control, management and possession of the said bank.

In violation of 18 U.S.C. 2113(b) and 2(a) and 2(b).

APP 1

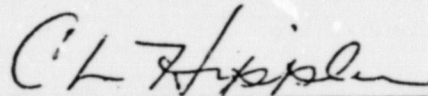


COUNT III

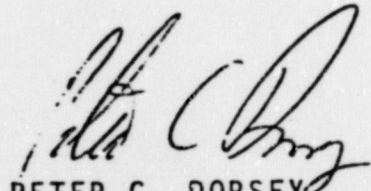
On or about the 18th day of February 1975, in the District of Connecticut, WILLIAM EUGENE ROBINSON, a/k/a Willie Gene Robinson, a/k/a Ponzo and DAVID JAMES TATE, by force and violence and by intimidation, did take from the person and presence of Retta Mondulick, about \$2,034.00 in money belonging to and in the care, custody, control, management and possession of the Connecticut National Bank, the deposits of which were then insured by the Federal Deposit Insurance Corporation, and WILLIAM EUGENE ROBINSON, a/k/a Willie Gene Robinson, a/k/a Ponzo and DAVID JAMES TATE in committing the aforesaid offense did put in jeopardy the life of the said Retta Mondulick by means and use of a dangerous weapon, that is, a shotgun and a revolver.

In violation of 18 U.S.C. 2113(d) and 2(a) and 2(b).

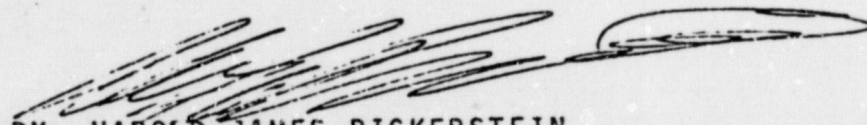
A TRUE BILL



FOREMAN



PETER C. DORSEY  
UNITED STATES ATTORNEY



BY: HAROLD JAMES PICKERSTEIN  
CHIEF ASSISTANT UNITED STATES ATTORNEY

**N-75-20**

**TITLE OF CASE**

**ATTORNEYS**

**For U. S.:**

**vs.**

Peter C. Dorsey, U.S. Atty.  
Harold J. Pickerstein  
915 Lafayette Blvd.  
Bridgeport, Conn.

WILLIAM EUGENE ROBINSON  
a/k/a/ WILLIE GENE ROBINSON a/k/a  
PONZO

anc'

DAVID JAMES TATE

**For Defendant:**

ROBINSON:

Gregory B. Craig (appt)  
770 Chapel Street  
New Haven, Conn.

TATE:

Joseph Chiarelli  
1324 Dixwell Avenue  
Hamden, Conn.

DATE	PROCEEDINGS
1975 3/10	The Grand Jury at New Haven returned a True Bill of Indictment charging violation of Title 18, U.S.C. 2113(a) (b) and (d), 2(a) and 2(b)--three counts---Ct. 1--taking by force, violence, and intimidation from person and presence of another, money belonging to and in care of bank, deposits of which were then insured by the F.D.I.C., Ct. 2--taking and carrying away with intent to steal money in excess of \$100.00, belonging to and in the care of said bank, Ct. 3-- in committing aforesaid offense did put in jeopardy the lives of others by use of dangerous weapons. Bench warrants may issued and be lodged as detainers for both defendants. Zampano, J. m-3/11/75.
3/11	ROBINSON & TATE: Bench warrants issued in duplicate together with a certified copy of the Indictment handed to U.S. Marshal for service.
3/18	ROBINSON: Motion to Modify Conditions of Release, filed by defendant.
3/20	ROBINSON: Motion to Modify Conditions of Release endorsed as follows: "Granted." copies mailed to counsel. Zampano, J. m-3/20/75.

Add 3



DATE	PROCEEDINGS
6/5	Exhibits 1 & 2 filed. Deft. Ex. A, marked for ID. Govt. witness, Smith, resumes stand for continued cross examination. Deft. witness, sworn and testified. Motion to Suppress Evidence is denied for reasons stated in open Court. Joint Motion of Defendants for Motion to Suppress Photographic and eye witness Ident.. Deft. Tate filed written Motion to Suppress Photographic and eyewitness Ident. Agent Smith takes stand, still under oath and testifies. Govt. Ex. 3 marked for ID, Govt. Ex. #3, made full exhibit. Three Govt. witnesses sworn and testified. Govt. Ex. #4, marked for ID., Govt. Ex. #4 made full exhibit. Agent Smith returns to stand still under oath and testifies. Motion to Suppress Photographic and Eyewitness Ident, is denied for reasons stated in open Court. Newman, J. m-6/6/75.
6/6	ROBINSON: Motion to Strike Surplusage endorsed as follows: "Motion denied without prejudice to renewal at close of evidence at Trial. Newman, J. m-6/6/75. copies mailed to counsel or record.
6/6	ROBINSON: Motion to Suppress Photographic and Eyewitness Ident. endorsed as follows: "Motion Denied, after hearing, for reasons stated in open Court. Newman, J. m-6/6/75 copies mailed to counsel
6/6	ROBINSON: Motion to Suppress Evidence endorsed as follows: Motion Denied for reasons stated in open Court, after hearing. Newman, J. m-6/6/75. copies mailed to counsel
6/6	TATE: Motion to Suppress Photographic and Eyewitness Identification endorsed as follows: "Motion denied, after hearing, for reasons stated in open Court." Newman, J. m-6/6/75. copies mailed to counsel
6/9	ROBINSON: CJA 21 Form, authorizing Gerald Gale, Court Reporter to prepare transcripts of Suppression hering, filed. Newman, J. copies distributed.
6/9	TATE & ROBINSON: On JON's Jury assignment List, Tate, Change of Plea, see sepearte minutes. Robinson, marked ready, jury impanelled. Newman, J. m-6/9/75.
6/9	TATE: CHANGE OF PLEA: Defendant request leave to change his plea of not guilty entered earlier to Count 2. Court grants request and orde previous plea erased from the record. Defendant put to plea again and pleads guilty to Count 2. Case continued on same Bond for presentence report. Remaining counts to be dismissed at sentencing. Newman, J. m-6/9/75.
6/9	ROBINSON: JURY TRIAL COMMENCES: 12:43 P.M. 39 Jurors present and respond to roll call and Voir Dire oath administered. Counsel agree on selecting a panel of 14, with the last two names drawn as alternates. 12 jurors and 2 alternates impanelled and sworn. Case to begin on Tues. June 10, 1975 at 2:00 P.M.. Jury excused. 1:42 P.M. Court adjourn ed. Newman, J. m-6/10/75.
6/10	Court Reporter's Transcript of Proceedings (hearing on motions) held on June 5, 1975, filed. Gale, R.
6/10	CJA Form 21, approving the sum of \$83.75 payable to Court Reporter, Gerald Gale, filed and entered. Newman, J. copies distributed
6/10	ROBINSON: JURY TRIAL CONTINUES: 2:12 P.M. In the absence of the jury deft. request the remaining surveillance photos from the bank. La/ Student Intern Appearance Form, for Benjamin Cohen, filed by Govt. Govt. Exs. 1 thru 6 marked for I.D. Deft. moves for dismissal of Indictment for Govt's non compliance for evidence requested by deft. denied 2:35 P.M. Jury enters Courtroom, 12 jurors and 2 alternates present. Govt. witness sworn and testified. Govt. Ex. #7 marked for ID. Govt. witness Mondulick recalled to stand for further cross-examination. Govt. witness sworn and tesitified. 4:49 P.M. Jury excused until



DATE 1975	PROCEEDINGS
6/10	10:30 A.M. of June 11, 1975. In absence of the jury, Govt. advises that case has been open file case and that the other bank surveillance films are available in U.S. Attorney's Office for viewing. 4:50 P.M.
6/11	<p>Court adjourned. Newman, J. m-6/11/75</p> <p>ROBINSON: JURY TRIAL CONTINUES: 2:50 P.M. Deft. Robinson's Request to Charge, filed. In absence of the jury Counsel discuss the possibility of showing the film to jury, by means of a projector and also any narration that will go along with the film. Counsel also discuss the admissibility of evidence to be offered by officer from Bridgeport P.D. Court will allow evidence of the officer. In the absence of the jury deft. moves to delete the name of deft. Tate from the Indictment. No ruling at this time. Govt. witness sworn and testified. Govt. Exs. 8 &amp; 9, filed. Govt. witness sworn and testified. Govt. Exs. 1 thru 5 and 7 made full exhibits. Govt. Exs. 10 &amp; 11 filed. Two Govt. Witness sworn and testified. Govt. Ex. #6, made full exhibit. Govt. Ex. 12, filed. Govt. Ex # 13, marked for ID, Govt. Ex. #13, made full exhibit. 4:23 P.M. Govt. Rests. Jury excused while arrangements are made to show film of bank robbery in Govt. Ex #11. Jury returns to Courtroom and Govt. Ex #11 is shown through projector for them to view. 4:58 P.M. Jury excused until 10:00 A.M. June 12, 1975. 4:59 P.M. Court adjourned; Newman, J. m-6/12/75.</p>
6/12	<p>ROBINSON: JURY TRIAL CONTINUES: 10:41 A.M. Court advises counsel that juror #4 Mrs. Sedor is unavailable today and that Mr. Johnson, Alt. #1 will be replacing her in the array. Jury enters Courtroom, 13 members present. 3 deft. witnesses sworn and testified. Jury Instructions, Govt. Requested Instructions No. 1, filed by Govt. Deft. sworn and testified. 2:32 P.M. Defense rests. Govt. witness, Clarence Smith, previously sworn is recalled to stand for rebuttal testimony. Govt. rests 2:46 P.M. In absence of the jury Court suggest possibility that deft. be viewed by the jury with cap similar to that worn in the bank photo. Deft. moves for judgment of acquittal-denied. Court and counsel discuss the charge to the jury. Indictment with only the deft, Robinson's name, filed. 3:39 P.M. Govt. summation. to 3:56 P.M. 3:56 P.M. - 4:35 P.M. Deft. summation. 4:35 P.M. to 4:49 P.M. Govt. closes. Court instructs the jury that it will deliver its charge at 10:00 A.M. June 13, 1975. 4:52 P.M. Jury excused and Court adjourns until 10:00 A.M. June 13, 1975.</p>
6/12	Court Reporter's Notes of Proceedings (Motion) held on June 5, 1975, filed. Gale, R.
6/13	Marshal's return showing service, filed: Subpoena to Testify (2).
6/13	<p>ROBINSON: JURY TRIAL CONTINUES: 10:03 A.M. In absence of the jury Court and counsel discuss setting up film in Govt. Ex. #11, in the jury room. Two supplementary instructions, filed by deft. Court advises that an Indictment has been typed up which has omitted the alias and deft. Tate's name. Counsel agree to have it go to the jury. Jury enters Courtroom 13 members present. Court excuses Alt. juror. 10:18 A.M. - 10:51 A.M. Court charges Jury. 10:51 Jury retires to jury room. Govt. and deft. take no exception to charge. By agreement of counsel all full exhibits and Indictment are brought to the jury room by the Clerk of the Court and deliberations begin. 3:25 P.M. A note is handed to Court from Jury. Court advises counsel that jury has encountered difficulty in reaching a verdict and will give the jury further instruction. Deft. moves for a mistrial-denied. 3:30 P.M. Jury re-enters Courtroom and further instruction is given. 3:35 Jury</p>

DATE  
1975

## PROCEEDINGS

6/13 con. returns to jury room for continued deliberations. No exceptions taken to supplemental charge. Court Ex. #1, marked. 5:24 P.M. Note from Jury advising that there is no real possibility of reaching verdict. Deft. moves for a mistrial. 5:26 P.M. Jury is returned to the Courtroom and questioned if they were in agreement with note and they answer in the affirmative. Motion for a Mistrial is granted. 5:31 P.M. Jury is excused subject to call. Court Ex. #2, marked. Deft. advises that he will be filing motion for Directed verdict. 5:32 Court adjourned.

6/16 TATE: Court Reporter's Transcript of Proceedings (COP) held on June 9, 1975, filed. Gale, R.

6/16 Court Reporter's Notes of Proceedings held on June 9, 1975, filed. Gale, R. (C.O.P. and Jury Selection)

6/18 Court Reporter's Sound Recordings of Proceedings (C.O.P.) held on June 9, 1975, filed. Gale, R.

6/24 Motion for Return of Exhibits, filed by Government and endorsed as follows: Motion Granted. Newman, J. m-6/26/75. copies to counsel

6/24 Motion for Return of Exhibit No. 8, filed by Government and endorsed as follows: Motion Granted. Newman, J. m-6/26/75. copies sent to counsel

6/24 Receipt for Government exhibits 1 thru 13, filed by Government.

7/17 TATE: Appearance Bond in the amount of \$5,000, with surety of 10% deposit of \$500.00 of Eugene Tate, filed by deft. and approved Zampano, J. m-7/22/75.

7/22 ROBINSON: Letter from Federal Public Defender, Gregory B. Craig, Esq. requesting authorization for transcript, filed and endorsed as follows: "Request for Transcripts of oral argument in U.S. v. Robinson, N-75-20, is denied." Newman, J. m-7/22/75. copies mailed to Atty. Craig

8/6 ROBINSON: Court Reporter's Notes of Proceedings held on June 13, 1975, filed. Gale, R. (Jury trial)

9/8 ROBINSON: Court Reporter's Transcripts of Proceedings (Trial) held on June 10, 11, 12 and 13, filed. Gale, R.

9/8 ROBINSON: Court Reporter's Notes of Proceedings (Trial) held on June 11, 1975, filed. Gale, R.

ROBINSON: Court Reporter's Notes of Proceedings (Trial) held on June 10, 1975, filed. Gale, R.

ROBINSON: Court Reporter's Notes of Proceedings (Trial) held on June 12, 1975, filed. Gale, R.

9/9 TATE: DISPOSITION: Deft. is committed to the custody of the Atty. General or his authorized representative for imprisonment for a period of ten years. Zampano, J. m-9/10/75.

9/9 Order for Return of Bond, filed and entered. Zampano, J. m-9/10/74. Check #312 handed to Mr. Eugene Tate.

9/10 TATE: Motion to Dismiss Counts 1 and 3 of the Indictment, filed by the Government and So Ordered. Zampano, J. m-9/10/75 copies mailed to Atty. Pickerstein and Chiarelli.

9/12 TATE: U.S. Magistrate's Papers, filed: Record of Proceedings Complaint and Affidavit of Clarence Smith.

9/16 TATE: Judgment and Commitment, filed and entered. Zampano, J. m-9/16/75. Two certified copies handed to U.S. Marshal

9/16 TATE: Court Reporter's Notes of Proceedings (Disp) held on Sept. 9, 1975, filed.

App 6



DATE	PROCEEDINGS
1975	
9/23	ROBINSON: On RCZ's Jury Assignment List: Ready #2 pending the availability of the Public Defender. Zampano, J. m-9/23/75.
9/24	ROBINSON: Marshal's return showing service, filed: Subpoena to testify (4) and Subpoena to Produce (1).
10/15	CJA Form 21 approving the amount of \$456.25 payable to Court Reporter, Gerald Gale, filed. Zampano, J. copies distributed.
11/10m	Marshal's return showing service, filed. Judgment and Commitment re: Tate.
12/3	Court Reporter's Sound Recordings of Proceedings held on Apr. 14, 1975, (Plea, TATE), filed. Russell, R.
"	Court Reporter's Sound Recording of Proceedings held on 9/9/75, filed. Russell, R. (DISP. TATE)
1/7	ROBINSON: Marshal's return showing service, filed: 3 Subpoena to testify and 1 Subpoena to produce.
1/6/	On RCZ's Jury Assignment List: Trial set for 1/20/76. Zampano, J. m-1/7/76
1/8	Application for Writ of Habeas Corpus Ad Testificandum (2), filed by Govt. and allowed. Zampano, J. m-1/9/76. Two certified copies of each handed to U.S. Marshal for service.
1/12	Marshal's return showing service, filed: 1 Subpoena to testify.
1/19	Marshal's return showing service, filed" Subpoena to produce.
1/20	ROBINSON: JURY TRIAL COMMENCES: 1:30 P.M. 40 jurors present and oath on voir dire administered. Govt. 3 challenges, deft. 10 challenges. 13 jurors excused for cause. 12 jurors and 2 alts. impanelled and sworn. 3:00 P.M. remaining jurors excused subject to call. 3:10 P.M. jury excused until 10:30 A.M. of 1/27/76. In the absence of the jury the Court discusses testimony to come in with offer of proof by counsel for the govt. decision reserved. Deft. Motion to eliminate aliases denied w/o prejudice. This case adjourned until 1/22/76 at 10:30 A.M. to hear further matters before trial. 3:20 Court adjourned. Zampano, J. m-1/21/76/
1/20	On RCZ's Jury Assignment List: Ready, jury impanelled. Zampano, J. m-1/20/76.
1/22	Marshal's return showing service, filed: 3 Subpoenas to testify. re: ROBINSON.
1/22	Hearing held on Pre Trial matters. Counsel stipulate that Jencks Act material has been provided to defense counsel. Denies renews motions presented before the first trial. Counsel stipulate that transcript of the first trial will apply to this trial. Deft. renews Motion to Suppress. Court Exs. 1 thru 4 marked for ID. Decision reserve. Court adjourned at 12:45 P.M. Zampano, J. m-1/23/76.
1/27	ROBINSON: JURY TRIAL CONTINUES: Pending motions to suppress are discussed. Court Report is instructed to transcribe minutes of hearing before Judge Newman re: suppression of seized property. Motion to Suppress eyewitness and photographic ident is denied for reasons stated in open Court. Court and counsel agree that this jury panel should be told of previous trial. 3 Govt. witnesses sworn and testified. Govt. Exs. 1 thru 8, filed. In the absence of the jury defense moves for a continuance. Motion denied. In the absence of the jury Govt. witness sworn and testified on suppression. 4:10 P.M. Jury present. Govt. witness sworn and testified. 5:00 P.M. Court adjourned until 10:30 A.M. of 1/28/76. Court asks counsel to have their request to charge by the end of the day 1/28/76. Zampano, J. m-1/27/76. *11:15 A.M. 14 jurors present.

## PROCEEDINGS

6

Marshal's return showing service, filed: Subpoena to testify.  
ROBINSON: JURY TRIAL CONTINUES: Defendant's Motion for a Mistrial, filed. 10:55 A.M. Hearing on Motion for a Mistrial - decision reserved. 11:05 A.M. 12 jurors and 2 alternates present. Two Govt. witnesses sworn and testified. Govt. Ex. #10 and 11, filed. Ex. #10 (film) shown to jury. 12:40 P.M. Jury excused to 1/29/76 at 10:00 A.M. In the absence of the jury, court and counsel discuss requests to charge. One Govt. witness sworn and testified in the absence of the jury re investigative proceedings. Defendant's Request to Charge, filed. 1:05 P.M. Court adjourned to 1/29/76 at 10:00 A.M. Zampano, J. m-1/29/76.

ROBINSON: JURY TRIAL CONTINUES: Affidavit of Personal Prejudice, filed by deft. 12 jurors and 2 alts. present 10:10 A.M. 1 Govt. witness sworn and testified. Govt. Exs. 12 thru 14 filed. Govt. Rests 10:59 A.M. Deft.'s Motion that all counts be dismissed-denied. Deft.'s Motion that all witnesses be sequestered granted. 9 Deft. witnesses sworn and testified. Deft. sworn and testified. Govt. Ex. 15, filed. Stipulation, filed. Deft. Ex. A & B, filed. 4:45 P.M. jury excused until 10:00 A.M. of 1/30/76. 4:50 P.M. Court adjourned. Zampano, J. m-1/30/76.

ROBINSON: JURY TRIAL CONTINUES: In the absence of the jury the Court discusses testimony to be brought in through a Stipulation with offer of proof by counsel for deft. Deft. Motion for mistrial denied. 11:19 A.M. 14 jurors present. Deft. previously sworn resumes stand. 2 Deft. witnesses sworn and testified. Deft. Ex. c thru J, filed. Govt. Ex 16 and 17, filed Govt. Ex 18, marked for ID. 12:28 P.M. Deft. rests. Govt. rebuttal witness sworn and testified. 1 Govt. rebuttal witness previously sworn resumes stand and testified. 2:38 P.M. Govt. rests. Deft. Motion for continuance-denied. Court Ex. 1, marked. Deft. renews motion under Rule 29-denied. 3:11 P.M. 3:30 P.M. Govt. opens. 3:30 to 4:28 P.M. Deft. 4:28 to 4:34 P.M. Govt. closes. 4:35 P.M. Court adjourned in the case until 9:45 A.M. of 2/2/76. Zampano, J. m-2/2/76.

ROBINSON: Jury Trial Continues: 11:15 A.M. 14 jurors present. Court charge 11:16 A.M. to 12:07 P.M. Alternate jurors excused. 12:08 jury excused to jury room. Defense excepts to the charge. 12:17 P.M. Indictment and exhibits brought to jury room by agreement of counsel and deliberation begins. 2:32 Notes from jury. Court Exs. 2 & 3 marked for ID. 3:21 jury enters Courtroom, Court responds to the notes. 3:28 P.M. jury excused for further deliberation. 3:42 Court informed jury has reached a verdict. 3:49 Jury returns the following verdict COUNT 1-GUILTY, COUNT 2-GUILTY, COUNT 3-NOT GUILTY. Verdicts verified and ordered recorded by the Court. \*3:54 jury excused. \* jury polled at the request of the deft. and all answer in the affirmative. Govt. motion to remand the deft under \$100,00 bond. Court sets bond at \$35,000. with surety. 4:00 Court adjourned. Zampano, J. m-2/4/76.

/6

Court Reporter's Notes of Proceedings held on Jan. 26, 27, 28, 29, and February 3, 1976, filed. Russell, R. (Jury Trial) six packages. Marshal's return showing service, filed: 3 Subpoenas to testify and 1 Subpoena to produce.

/2

Marshal's return showing service, filed: Writ of H. C. ad Testificandum.

/4

CJA Form 21 approving transcript for appeal purposes, filed. Zampano, J. copies distributed.

App 8



DATE	PROCEEDINGS
4/12	ROBINSON: Impr. 15 yrs. U.S.' Motion to Reduce Bond is denied. Deft. advised of his right to appeal. Motion to Appeal in Forma Pauperis is granted. Notice of Appeal filed by Deft. Zampano, J. m-4/13/76.
4/14	Notice of Appeal is endorsed: Motion to Reduce Bond in Forma pauperis is granted. Zampano, J. m-4/14/76. Copies mailed to counsel.
4/15	Certified copies of docket entries and Notice of Appeal mailed to Clerk, U.S.C.A.
4/13	Court Reporter's Notes of Proceedings (DISP: ROBINSON) held on 4/12/76, Filed. Russell, R.
4/15	Judgment and Commitment, filed and entered. Zampano, J. m-4/15/76. Two certified copies handed to U.S. Marshal.
4/13	Order for Return of Bond, filed and entered. Zampano, J. m-4/22/76. Check #300 issued and mailed to Rena Robinson, surety.
4/23	NOTE: Order reducing Sentence, filed and entered. Ordered that paragraph Four of the Judgment of this Court dated Sept. 1, 1975, be amended so as to provide as follows: It is adjudged that the deft. is hereby committed to the custody of the Atty. General or his authorized representative for imprisonment for a period of six years on Count Two. Zampano, J. m-4/23/76. Copies mailed to Attys Pickersheim and Chiarelli.
4/27	Court Reporter's Sound Recording of Proceedings (DISP) held on 4/12/76, Filed. Russell, R.

APP 9

- Zampano opinions  
incorporating earlier  
record of proceedings  
& Newman decisions. 2

P R O C E E D I N G S

THE COURT: Prior to the commencement of the testimonial evidence, there are some several preliminaries that I will take up with counsel.

First, I was asked if David James Tate, in Criminal No. N-75-20, has requested a reduction of sentence. The answer is yes. I have not ruled on it, for no particular reason except that I have not had the time to review his petition.

The second matter before the Court are a series of motions to suppress.

With respect to the motion to suppress photographic and eyewitness identification with respect to the witnesses Welch and Mandulik, I have had the benefit of the testimony before Judge Newman and Judge Newman's ruling. With respect to the motion to suppress evidence seized in search of Mr. Robinson's apartment, I have not had the benefit of the testimony before Judge Newman. Upon inquiry, I learned that that testimony was not transcribed. The court reporter informed me that it was very lengthy testimony and cross-examination, involving, I believe, two witnesses.

However, in the short time we have had, I was



1  
2 able to obtain Judge Newman's ruling.

3 We have several options, I think, at this  
4 point:

5 One, counsel can rely on their offer of  
6 proof that they made before this Court the other  
7 day, and I can base my ruling on that offer of  
8 proof.

9 Two, I can set aside a time and we can hear  
10 whatever witnesses either the Government or the  
11 defendant wishes to call.

12 I will just leave it to counsel as to how  
13 I should proceed on that motion to suppress,  
14 because I do believe that both attorneys thought  
15 the testimony before Judge Newman had been  
16 transcribed.

17 Then, three, I have the issue of Bowens'  
18 testimony.

19 Have I overlooked something?

20 MR. PICKERSTEIN: I believe that is all,  
21 your Honor.

22 With respect to the motion to suppress the  
23 evidence seized at Robinson's apartment, it is the  
24 defendant's motion. The Government is agreeable  
25 to whatever manner Mr. Craig wishes to approach it,

1  
2 be it by the offer of proof or by evidence.

3 MR. CRAIG: Your Honor, I do not think  
4 there is any reason to have another hearing. I  
5 think the offer of proof that I made would  
6 suffice if, for purposes of appeal, I would also  
7 have access to the testimony that was presented  
8 before Judge Newman at the hearing. I would hate  
9 to restrict myself to my summarization of that  
10 testimony on appeal if it is possible to include  
11 the record from that hearing as the basis for  
12 that summary.

13 MR. PICKERSTEIN: I have no objection to  
14 that procedure, your Honor.

15 THE COURT: Yes, I think that is a fair and  
16 reasonable approach.

17 I might say that I have read Judge Newman's  
18 opinion, and, of course, he incorporates findings  
19 gleaned from the testimony before him. So I  
20 would think that the testimony before him can be  
21 incorporated by reference into our present record.  
22 I will rely on the offers of proof made by counsel  
23 in addition to the findings of fact made by Judge  
24 Newman.

25 Also, I will instruct the court reporter to



1  
2 type up the minutes of that hearing before Judge  
3 Newman in the event counsel for the defendant  
4 requests it. I assume if the defendant is  
5 acquitted there would be no need to type that lengthy  
6 document.

7 Finally, I will give counsel for the defen-  
8 dant an opportunity to file a motion after trial,  
9 in the event the defendant is convicted, asking  
10 for a reconsidering of my ruling on the motion to  
11 suppress evidence seized in search of Robinson's  
12 apartment based on the transcript that would now be  
13 available. If I find that my ruling this morning  
14 is in error, then, of course, I will have to take  
15 appropriate action.

16 With respect to the first motion -- that is,  
17 the motion to suppress photographic and eyewitness  
18 identification concerning the witnesses Welch and  
19 Mandulik, the Court denies the motion to suppress.  
20 I have read the transcripts, and I agree with  
21 Judge Newman's rulings of June 5, 1975. There is  
22 no evidence, nor, in fact, is there any claim  
23 before me, that the spread in and of itself had  
24 suggestive characteristics.

25 The test to be applied is whether the

1  
2 photographs used were so impermissively suggestive  
3 as to give rise to a very substantial likelihood  
4 of irreparable misidentification, so that  
5 allowing the in-court identification would be a  
6 denial of due process, and that test turns on the  
7 totality of the circumstances. Nothing that was  
8 advanced to me would indicate that the totality of  
9 the circumstances would fatally infect the photo  
10 identifications made by the two witnesses. So I  
11 agree with Judge Newman, and for the reasons he  
12 stated in his opinion.

13 I would like to go a step beyond that  
14 opinion, however, to assume for the sake of  
15 argument that the photographic identification had  
16 one or more defects. That does not end the  
17 matter. The question then is posed whether there  
18 is a sufficient independent basis for the witnesses'  
19 in-court identification of the defendant.

20 In this case, after carefully reviewing the  
21 transcript, I find that it seems clear that the  
22 in-court identification of Mr. Robinson was  
23 based on the two witnesses' independent recollec-  
24 tion of the events. Among other things, the  
25 witnesses -- at least the witness Welch -- had a



1  
2  
3 two- to three-minute conversation with Mr.  
4 Robinson. It was casual conversation, so that  
5 Mr. Welch cannot be assumed to be under tension  
6 or stress. He was about two feet away from Mr.  
7 Robinson, he had a clear view of Mr. Robinson,  
8 and his attention was directed toward Mr. Robinson  
9 because they talked about employment.

10 Finally, there was a positive identification.

11 Miss Mandulik did not have the length of  
12 time to observe Mr. Robinson that Mr. Welch did,  
13 but I believe she testified that she talked with  
14 Mr. Robinson for about a minute and a half, and  
15 she was engaged in this conversation concerning  
16 employment. She had a close and clear view of  
17 him. In addition, she had another good look at  
18 him during the course of the robbery. I suppose  
19 it is superfluous for me to say at this time that  
20 neither of the robbers had masks on. And her  
21 identification was positive.

22 Under all these circumstances, the motion  
23 is denied for the reasons stated.

24 I would like to also place on the record  
25 some cases that the Court relied on:

Simmons versus United States, 390 United

States, 377, 1968;

The United States ex rel Phipps versus Hollette, 428 Federal 2nd, 912, 2nd Circuit, cert denied;

And Neal versus Biggers, 409 U. S. 188, 1972 case.

Other 2nd Circuit cases that I believe are relevant are United States of America versus Robin Yanishefski, a 1974 case written by District Judge Palmieri, sitting by special designation, and United States ex rel Lucas versus Regan, a 1974 2nd Circuit case, the majority decision written by Judge Hayes.

With respect to the motion to suppress evidence seized in search of Robinson's apartment, I read Judge Newman's opinion and it seems one that I should adopt. Nothing has been said that would dissuade me from that cogent and succinct opinion.

The matter of consent is, of course, a question of fact, and Judge Newman did find that there was consent. In addition, there was a signed consent to search, and, as Judge Newman indicated, there is no indication that this was



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2  
3 obtained by any duress. I do not believe there  
4 was a brief filed on this point, either, before  
5 Judge Newman or before me, so, therefore, based  
6 on the offer made before this Court, based on the  
7 testimony before Judge Newman, which is  
8 incorporated by reference in his opinion, I also  
9 deny the motion to suppress evidence seized in  
10 search of Robinson's apartment.

11 The third matter is Mr. Bowens' testimony,  
12 and, frankly, I am still a bit troubled by that.

13 MR. PICKERSTEIN: Your Honor, I think I  
14 can alleviate that problem. It is not the  
15 present intention of the Government to offer Mr.  
16 Bowens' testimony at this trial.

17 THE COURT: Very well. I assume if you  
18 intend to offer Mr. Bowens' testimony you will  
19 make that known to Mr. Craig, and he can renew his  
20 motion.

21 MR. PICKERSTEIN: That is correct, but it  
22 is not my present anticipation to offer that  
23 testimony.

24 THE COURT: The Motion may go off without  
25 prejudice.

MR. PICKERSTEIN: Thank you, your Honor.

The point that Mr. Craig raises, whether or not there in effect should be a Miranda type warning given to people whose premises are about to be searched, I think has been litigated before. I know in the Fifth Circuit there appeared for a time to be some cases indicating that perhaps that requirement might exist, but my recollection is that has been significantly cut back, and, beyond that, my understanding is that there is no such requirement, in this jurisdiction, at least.

That is all the Government has.

THE COURT: I will rule on the motion at this time. I will deny the motion on the basis that the Government properly obtained Mrs. Robinson's consent to conduct a search of the apartment.

The facts are fairly straightforward and are only disputed in two respects. The agents initially entered the apartment in the morning for the purposes of executing an arrest warrant. Their search of the apartment at that time was limited to a search for the defendant. They did not open bureau drawers. There is no indication that they did anything other than look in those



1 where the defendant might be. There is  
2  
3 indication that the apartment was ransacked or  
4  
5 her indication that a search for items as  
6  
7 guished from the defendant had occurred.  
8  
9 They then returned later in the day and got  
10  
11 as the door, and, when they were told that  
12  
13 Robinson was not there, they left, which  
14  
15 tes that that is who they were looking for.  
16  
17 They then returned later in the evening,  
18  
19 and Mrs. Robinson. At her invitation, they  
20  
21 invited into the apartment to talk with her.  
22  
23 e point in the conversation they asked her  
24  
25 r she had any objection to their searching.  
At the agent's testimony that he did advise  
Robinson that they did not have a search  
and that he told her that she did not have  
to the search. Mrs. Robinson then signed  
to search. There is no indication  
this was obtained by any duress or overbearing  
sort; and pursuant to that consent a search  
the and the coat in question was found, and  
Robinson thereafter gave her permission to  
agents to remove the coat.  
The conclusions are the entry was by

1  
2 invitation, there was no undue repetition, since  
3 the agents' purpose in returning was entirely bona  
4 fide, they needed to try to execute a warrant,  
5 and they came to talk to a person who might have  
6 information about the whereabouts of the subject,  
7 they obtained a valid consent, they searched  
8 pursuant to the consent, the consent was  
9 voluntarily given, and the person who gave the  
10 consent was in a position to do so, and no rights  
11 of the defendant were impaired by the removal of  
12 his jacket pursuant to that consent search.

13 So the motion is denied.

14 I will take a brief recess, for U. S.  
15 against North.

16 (Discussion off the record)

17 MR. DOW: After that, does your Honor  
18 intend to continue with the identification hearing?

19 THE COURT: Yes.

20 (A recess was taken.)

21 THE COURT: Are we ready to resume?

22 MR. DOW: The Government is ready.

23 THE COURT: The defendant Tate is now  
24 present, as is his counsel, so we will proceed  
25 with the motion to suppress photographic



1  
2 *Newman opinion*  
3 *them.*

4 MR. CRAIG: Okay. I want to be heard on  
5 that point. With respect to the motion to  
6 suppress, I will let your Honor rule on the  
7 evidence as it was presented.

8 Thank you.

9 MR. DOW: Government submits --

10 THE COURT:

11 All right, with respect to the presentation  
12 of the photo spreads to both the witnesses Welch  
13 and Mondulick and their identification of the  
14 defendants Robinson and Tate, the motions to  
15 suppress are denied. In each instance the  
16 spreads, themselves, are in no way suggestive.  
17 The defendants are not identifiable in the spread  
18 by any particular characteristic. The spread  
19 containing the photo of Mr. Robinson does have a  
20 suggestive characteristic, but it is not one that  
21 in any way supports his claim; if anything, it  
22 hurts his claim. The suggestive feature is that  
23 the photo of somebody else appears twice. But,  
24 since it is not he, that does not help him any, and  
25 if anything, it only indicates that despite a

suggestion to pick out somebody else, the witness picked out Mr. Robinson's photo.

The display of the photos was, in the main, uneventful. The only possible claim on behalf of Robinson is that, once Mr. Welch paused over photo 5, something was said that might have been interpreted by him, although he does not seem to have taken it this way, to mean that, because he should look at the other photos, No. 5 was not the one. Even if he took it that way, that left four other photos, and the four that remained after he passed No. 5 included both Mr. Robinson and a pair of photos of the same person. So his ability to pick out Mr. Robinson even from that group of four sufficiently eliminates any untoward suggestiveness.

With respect to Mrs. Mondulick's identification, the only possible claim of suggestiveness lies in the fact that the photo of Mr. Robinson had previously been initialed by Mr. Welch, along with the designation "Man at the counter." It is clear to me that that risk of suggestiveness ought not to have been taken.

This has come up once before, and I must say



1  
2  
3 I do not understand why, once a witness has  
4 identified a photo and puts something on the back,  
5 that conveys the fact that it has been identified,  
6 why the FBI does not place that photo for safe-  
7 keeping and simply secure another glossy print of  
8 that photo to show to other witnesses.

9 In this case the testimony is clear from Mrs.  
10 Mondulick that she made her identification before  
11 turning over the photo, so that no harm resulted.  
12 She also testifies that, while she saw the initials,  
13 that meant no more to her than it was a photo Mr.  
14 Welch had seen, inasmuch as she was asked to and  
15 did put her initials on every photo that she saw;  
16 and the photos bear that out, because apparently  
17 Agent Green, when he made the spread available,  
18 did have Miss Mondulick initial every photo, both  
19 in Exhibit No. 3 and Exhibit No. 4. That  
20 apparently was his practice.

21 It does seem that there is some risk that,  
22 if her eye saw the designation "Man at the counter,"  
23 that would reinforce her view that she had made a  
24 correct selection. But, since it clearly happened  
25 after she had made the selection, there is no harm  
in this case.

1  
2  
3 In short, there is not any suggestiveness in  
4 constitutional standards, and, even if there were,  
5 there is sufficient opportunity for observation  
6 to preclude any substantial risk of misidentifica-  
7 tion with respect to that. Mr. Welch had a clear  
8 opportunity to observe Mr. Robinson. It was more  
9 than just the quick view that a teller often gets  
10 at a time of a holdup, but it was more the pro-  
11 longed view that he got when they discussed  
12 employment prospects, so his view was adequate.  
13 Miss Mondulick's was adequate, not only because of  
14 the clarity of the view she had but because her  
15 suspicions were aroused to the possibility of some  
16 untoward incident before it ever happened; so,  
17 rather than being caught unawares, as most tellers  
18 are, she was already alert, and her observations  
19 are that much more significant, and the risk of  
20 misidentification is that much less.

21 So, for those reasons, the motion to suppress  
22 is denied.

23 MR. DOW: Thank you, your Honor.

24 (Time noted: 5:30 o'clock p.m.)

25 oOo



2 THE COURT: Anything further?

3 MR. CRAIG: Would it be appropriate now  
4 to have your reasons for the denial of the motion  
5 put on the record, your Honor?

6 THE COURT: Yes.

7 The defendant, pursuant to 28 United States  
8 Code, Section 144, has moved for a mistrial.  
9 The affidavit of personal bias and prejudice is a  
10 matter of record, and therefore extensive review  
11 of the contents is not necessary. In effect,  
12 however, Attorney Craig swears under oath that, in  
13 his opinion, this Court has a personal bias or  
14 prejudice either against the defendant or in  
15 favor of the Government because of certain  
16 facts which may be summarized as follows:

17 One, Mr. Tate received the maximum sentence  
18 of ten years for bank robbery on September 9,  
19 1972;

20 Two, at the time of sentencing the Court  
21 mentioned Mr. Tate's lack of cooperation;

22 And, three, the Court has not yet ruled on  
23 Mr. Tate's motion for a reduction of sentence  
24 filed on December 4, 1975.

25 These facts, among others, it is claimed,

1  
2 support the contentions that this Court has  
3 demonstrated personal prejudice in favor of the  
4 Government and against the defendant, and that in  
5 the eyes of the jury the Court is irreparably  
6 aligned with the prosecution against the  
7 interests of the defendant.

8 Further, the affidavit alleges that the  
9 defendant now finds himself deprived of a fair  
10 trial and due process of law.

11 Upon the filing of the required affidavit,  
12 the Court must follow certain procedures. Many  
13 cases set forth what these well established  
14 procedures are. Succinct guidelines are  
15 enunciated in Hodgson versus Liquor Salesmen's  
16 Local No. 2 of the State of New York, at 444  
17 Federal 2nd, 1,344, at 1,348, a 2nd Circuit 1971  
18 case, wherein the Court quoted Section 144,  
19 which provides as follows:

20 "Whenever a party to any proceedings in a  
21 District Court makes and files a timely and  
22 sufficient affidavit that the Judge before whom  
23 the matter is pending has a personal bias or  
24 prejudice either against him or in favor of any  
25 adverse party, such Judge shall proceed no



1  
2 further therein."

3 In order to guard against frivolous attacks,  
4 it further specifies that the affidavit shall  
5 state the facts and the reasons for the belief that  
6 bias or prejudice exists. Since the purpose of  
7 the section is to avoid the appearance as well  
8 as the actual existence of bias or prejudice on  
9 the part of the trial Judge, the facts stated in  
10 the affidavit as the basis for the belief that  
11 bias or prejudice exists must be accepted as true  
12 by the Judge even though he or she knows the  
13 statements to be false, citing cases. However,  
14 the trial Judge must at the outset determine  
15 whether the facts so stated would constitute  
16 legally sufficient grounds for refusal, citing  
17 cases, and, if the affidavit is insufficient, he  
18 is under just as much of a duty to deny the  
19 application as he would to preclude himself if  
20 it were sufficient, citing cases.

21 Mere conclusions, opinions, rumors or  
22 vague gossip are insufficient, citing cases.  
23 To be sufficient, the affidavit must set forth  
24 facts including the time, place, persons and  
25 circumstances, and, where based upon an

extrajudicial statement of the Judge, the substance of that statement."

This test has also been set forth in a recent case by Judge Platt of the Eastern District of New York in Lazofsky versus Somerset Bus Company, 389 Federal Supp., 1,041, at 1,043, where, among other things, Judge Platt quotes from a leading article as follows:

"To the extent that generalization is possible, the courts have construed Section 144 to require that the bias or prejudice be (1) bias in fact rather than an attitude evidencing the appearance of bias, (2) directed at the party rather than his attorney or the issues, (3) personal rather than general as against a class, and (4) extrajudicial in origin; that is, not developed in the course of litigation."

Applying these standards to the present case, the Court finds that the affidavit in support of the application for a mistrial and (7) acquittal is plainly insufficient on its face.

First, it is a matter of record what the reasons were for the imposition of Mr. Tate's ten-year sentence. This Court at the time of



1  
2 sentencing on September 9, 1975 expressly stated  
3 that the severity of the crime, the protection  
4 of society and deterrence to others warranted the  
5 maximum sentence. The evidence against Mr. Tate  
6 was overwhelming. He was identified by several  
7 witnesses, his fingerprints were uncovered at the  
8 scene of the crime, and he confessed. Illegal  
9 force and violence was involved in the commission  
10 of the crime, and at least one teller was panic-  
11 stricken, and her life was placed in jeopardy  
12 during the commission of the offense. Guns  
13 were displayed, and there is every reason to  
14 believe the perpetrators would have used them to  
15 secure their escape. In fact, there was  
16 evidence that when Miss Mondulick made a move  
17 that was misunderstood by at least one of the  
18 robbers, a gun was heard to be cocked for firing.  
19 Nothing in the presentence report indicated  
20 mitigating circumstances. Mr. Tate had a lengthy  
21 and serious record, including convictions for  
22 prior felonies. He lacked remorse, and it  
23 appeared that criminal activities had already  
24 become a way of life for him to satisfy an  
25 expensive drug habit.

1  
2 Thus, in this Court's opinion, a  
3 tion under the twenty-year statute and  
4 under the twenty-five-year statute was  
5 one conclusion. When the Government  
6 ed the defendant to plead to the ten-year  
7 Mr. Tate received more leniency than this  
8 ould possibly justify. A plea to any  
9 ount would surely have resulted in a  
10 -to-eighteen-year sentence by this Court.  
11 Although the Court imposed a maximum  
12 e, that sentence was lenient under all  
13 ountainances.  
14 econd, the Court did not order the maximum  
15 e because the defendant failed to testify  
16 Robinson's trial before Judge Newman.  
17 y did the Court spell out the reasons for  
18 -year sentence, but the Court expressly  
19 t page 7 of the transcript that I was  
20 ing the lack of cooperation into  
21 ration in imposing sentence. The  
22 quote is as follows, at page 7; in part I  
23  
24 'In addition, there has been no  
25 tion by you whatever. You may have your



1  
2 own solid reasons for it, and I am not taking  
3 that into account in the sentencing, but you  
4 certainly have not demonstrated to me that you  
5 are now rehabilitated."

6 The transcript clearly indicates that my  
7 references to lack of cooperation on Tate's part  
8 were in rebuttal to Tate's lawyer's unreasonable  
9 and rather incredible request that I place him  
10 on probation because of the progress he made in  
11 his rehabilitation between the time of his arrest  
12 and the date of sentencing. These contentions  
13 acted as a catalyst for the Court's retort  
14 that there are other factors, including  
15 cooperation, which Mr. Tate and his lawyer failed  
16 to consider in trying to convince the Court that  
17 there was a sincere and complete rehabilitation  
18 in this case.

19 However, even assuming arguendo that the  
20 Court was influenced in part because of Tate's  
21 lack of cooperation, I know of no law or case  
22 authority, nor has any been cited to me, that  
23 proscribes the fact of cooperation or the fact  
24 of lack of cooperation being one of the factors  
25 to be placed on the scale in the imposition of

1  
2 a fair and just sentence.

3 Third, there is no suggestion on my part  
4 that if he decided to testify on a retrial his  
5 sentence may be reduced. As you know, Mr.  
6 Robinson was originally tried by Judge Newman,  
7 and I am not sure I was even aware in September  
8 1975 that Judge Newman would ask me to take the  
9 retrial.

10 Also, Mr. Tate filed his motion for  
11 reduction of sentence before he concluded that it  
12 might be in his best interests to cooperate with  
13 the Government. His motion for reduction,  
14 dated December 4, 1975, almost two months prior  
15 to his change of mind on cooperation, does not  
16 even mention his willingness to testify.

17 Four, Mr. Tate has testified he did not  
18 believe his lack of cooperation affected the  
19 sentence and that after he was incarcerated he  
20 realized he received a modest period of  
21 imprisonment under all the circumstances. I  
22 believe he stated that other prisoners who  
23 committed bank robberies were serving sentences  
24 in excess of ten years.

25 Fifth, the fact that I have not ruled on



1  
2 his request for reduction in excess of the 120  
3 days mentioned in Rule 35 is certainly un-  
4 deserving of the inferences drawn in the affidavit.  
5 It is proper and quite common for a Court to  
6 conduct hearings on Rule 35 motions after the 120  
7 days have elapsed. Many times these motions are  
8 filed just within the statutory period and it is  
9 a practical impossibility to schedule hearings,  
10 when necessary, within the 120 days. Under the  
11 tremendous pressure of other business, it  
12 comports with judicial economy to schedule  
13 hearings when necessary at convenient times  
14 beyond the 120 days, particularly when, the  
15 defendant having been sentenced to lengthy  
16 incarceration, time is not of the essence.

17 I have taken the time to check the court  
18 records and find that I have pending before me  
19 four other motions for reduction which were filed  
20 prior to Mr. Tate's. They concern James Canestri,  
21 Paul Stigliano, Morris Smith, Guy DiGirolamo.

22 Also, a few days after Mr. Tate  
23 submitted his application, Robert Noonan applied  
24 for reduction of sentence, and I have not ruled  
25 on that application yet.

1  
2 Thus, there is not the slightest indication  
3 that I held Mr. Tate's application in abeyance  
4 for any reason other than more pressing business  
5 has been occupying all my judicial time.

6 Such cases as United States versus Polizzi,  
7 500 Federal 2nd, 856, at 896, 9th Circuit, 1974,  
8 cert denied, 419 U. S. 1,120, 1975, and U. S.  
9 versus Orsini, in this district, at 296 Federal  
10 Supp. 1152, at 1153, revealed that withholding  
11 Rule 35 applications beyond the 120 days for  
12 decision occurs frequently. I should also at  
13 this time state it is not unusual at all that a  
14 co-defendant who pleads guilty has his sentencing  
15 scheduled for a date following the trial of other  
16 defendants who have not pleaded guilty.

17 Sixth, the affidavit completely fails to  
18 allege a statement of fact which demonstrates  
19 personal bias or prejudice of a nonjudicial  
20 character. See Judge Mansfield's opinion in  
21 Hodgson at 1348. See also Wolfson versus  
22 Palmieri, 396 Federal 2nd, 121, Burger versus  
23 United States, 255 U. S. 22, and Rosen versus  
24 Sugarman, 357 Federal 2nd, 794.

25 Frankly, and parenthetically, as evidenced



1  
2 on my comments on the proffered Bowens testimony,  
3 there is an indication that Mr. Robinson would  
4 probably receive even more favorable rulings than  
5 he had during his prior trial.

6 Seventh, the allegation -- or, more  
7 accurately, the general conclusory opinion --  
8 that in the eyes of the jury the Court is  
9 irreparably aligned with the prosecution and  
10 that this Court lacks impartiality is pure  
11 speculation and conjecture. It has not support  
12 in fact. In any event, I intend to instruct  
13 the jury on how it should regard the Tate motion  
14 for reduction of sentence, and there is no reason  
15 to assume that they will not follow that instruc-  
16 tion.

17 Eighth, even assuming there is "a feeling"  
18 that I might now reduce Mr. Tate's sentence,  
19 such an exercise of discretion would not be in  
20 any way improper. For example, in Scarbach  
21 versus United States, 317 Federal 2nd, 546, at  
22 569, cert denied, the Court affirmed the judgment  
23 of conviction and denial of a new trial but  
24 stated that, in view of defendant's cooperation  
25 with the government, the District Judge "should

seriously consider" exercising its power under Rule 35 to reduce the sentence. See also Brown versus United States, 359 U. S. 41.

For these reasons, the motion is denied. Bring in the jury.

MR. CRAIG: Your Honor, could I have a moment to set up the machine?

THE COURT: All right.

MR. PICKERSTEIN: Your Honor, with the Court's permission, may I simply turn the table around?

THE COURT: Oh, yes.

All set?

MR. CRAIG: Thank you, your Honor.

THE COURT: Bring in the jury.

I assume you wish to renew your motions --

MR. CRAIG: Yes, sir.

THE COURT: -- at the conclusion of the evidence.

MR. CRAIG: Yes, sir.

THE COURT: All motions are denied.

MR. CRAIG: Under Rule 29.

THE COURT: All motions are denied.

MR. CRAIG: Yes. Thank you, your Honor.



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

-----X

UNITED STATES OF AMERICA :

-versus- :

WILLIAM EUGENE ROBINSON, a/k/a WILLIE :  
GENE ROBINSON, a/k/a PONZO, :

Defendant. :

-----X

Criminal Action  
No. N-75-20

United States Court House  
New Haven, Connecticut  
February 3, 1976

B e f o r e :

HON. ROBERT C. ZAMPANO, U. S. D. J.,

and a Jury of Twelve.

A p p e a r a n c e s :

For the Government:

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CERTIFIED STENOTYPE REPORTERS

750 MAIN STREET  
HARTFORD, CONNECTICUT

APP37

141 CHURCH STREET  
NEW HAVEN, CONNECTICUT

1  
2 MR. CRAIG: Mr. Canada.

3 THE COURT: Take that now.

4 (A recess was taken.)

5 (11:15 o'clock a.m., in the presence of the  
6 jury:)

7 THE COURT: Good morning, Ladies and  
8 Gentlemen. Very good seeing you.

9 We have had a real bout with Mother Nature,  
10 but it is nice to see that everyone is here, safe  
11 and healthy. However, due to the delay, I had  
12 to rearrange my schedule somewhat, and it seemed  
13 to me that you would surely be at lunch while you  
14 were deliberating, so that is why you had your  
15 orders taken for lunch.

16 In the event I should forget, when the  
17 marshal brings in your lunch, please stop  
18 discussing the case while the marshal is there.  
19 Your foreman or forelady should call off the  
20 discussion while you are being served lunch.  
21 Once the marshal leaves and you are back, just  
22 the twelve of you alone, then you can resume your  
23 deliberations through lunch if you wish.

24 Ladies and Gentlemen, you have heard the  
25 evidence presented in this case, you have heard



1  
2 the summations of the Government attorney and  
3 the lawyer for the defense, and now, in the  
4 orderly course of the trial, we come to what is  
5 known as the charge; that is, the instructions of  
6 law which it is my duty to give to you.

7 It is exclusively the function of the Court  
8 to set forth the rules of law which govern the  
9 case, with instructions as to their application.  
10 On the legal matters you must take the law as I  
11 give it to you; you are not at liberty to do  
12 otherwise.

13 On the other hand, you members of the jury  
14 are the sole and exclusive judges of the facts.  
15 During the course of the trial I occasionally  
16 asked questions of a witness. Do not assume  
17 that I hold any opinion on the matters to which  
18 my questions related. Remember at all times  
19 that you, as jurors, are at liberty to disregard  
20 the comments of the Court in arriving at your own  
21 findings as to the facts.

22 It is your duty to find the facts. You  
23 are to recollect and weigh the testimony and draw  
24 your own conclusions as to what the ultimate facts  
25 are, but you may not go outside the evidence to

1  
2 find the facts, nor resort to guesswork,  
3 conjecture or suspicion.

4 Therefore, you are to apply the law, which  
5 the Court gives to you, to the facts as you find  
6 them, and in this way you will render your ultimate  
7 verdict.

8 If in any instance in the course of the  
9 trial an objection was made to the testimony of  
10 any witness -- and I believe I told you that  
11 objections are perfectly proper and normal during  
12 the course of the trial -- and at that time the  
13 Court sustained the objection and ordered the  
14 objectionable testimony stricken, you are to  
15 disregard entirely such testimony. In addition,  
16 any rulings of the Court during the trial are not  
17 to be taken as indicating the Court's belief one  
18 way or another in the guilt or innocence of the  
19 defendant.

20 Also, from time to time during the course of  
21 the trial I excused you from the courtroom to  
22 discuss legal matters with counsel. As I told  
23 you at the start of the trial, the decision to  
24 excuse the jury is the Court's and not counsel's.  
25 So, therefore, you should in no way feel slighted



1  
2 or venture any guess or opinions on what occurred  
3 in your absence. The only reason you were  
4 excused was to spare you from listening to  
5 arguments of law which concern only counsel and  
6 the Court.

7 Now, this case involves three charges brought  
8 by the Government against the defendant, William  
9 Robinson.

10 With respect to these violations, I believe  
11 it will be helpful if I briefly summarize the three  
12 crimes and their relationship to each other. This  
13 will enable you at the outset to grasp the over-  
14 all accusations and thus better understand the  
15 details of the federal bank robbery charges.  
16 Later, of course, I must discuss with you each of  
17 the separate crimes charged, and I will instruct  
18 you as to each with respect to the statutory  
19 provision involved and the essential elements of  
20 each crime charged.

21 Now, in Counts One, Two and Three of the  
22 indictment, the defendant Robinson is charged with  
23 three separate violations of the federal bank  
24 robbery statute.

25 The defendant is accused in one count of

1  
2 robbing a bank of a sum in excess of \$100; in  
3 another count of robbing the bank of a sum of  
4 money by means of force and violence or  
5 intimidation; and in the third count of putting in  
6 jeopardy the lives of the teller or tellers in  
7 the bank by use of a dangerous weapon or weapons  
8 while robbing the bank of a sum of money.

9 Since each bank robbery count of the indict-  
10 ment charges the defendant with a separate crime,  
11 you must consider the essential elements of each  
12 count separately with respect to the defendant  
13 and return a verdict on each count of either not  
14 guilty or guilty. Of course, your verdict on one  
15 count should not influence your verdict on any  
16 other count.

17 As I stated, the case involves three  
18 criminal charges brought by the Government against  
19 the defendant, William Robinson.

20 Federal law prohibits the taking by force  
21 and violence or by intimidation, from the person  
22 or presence of another, money belonging to or in  
23 the custody of a bank which is insured by the  
24 Federal Deposit Insurance Corporation. This  
25 federal statute is known as Title 18, U. S. Code,



1  
2 Section 2113(a) and reads, in pertinent part, as  
3 follows:

4 "Whoever, by force and violence, or by  
5 intimidation, takes, or attempts to take, from the  
6 person or presence of another any property or money  
7 or anything of value belonging to, or in the care,  
8 custody, control, management, or possession of,  
9 any bank...(shall be guilty of a crime)."

10 The defendant is charged with a violation of this  
11 federal statute or law.

12 Federal law also prohibits the taking away,  
13 with intent to steal, money exceeding \$100  
14 belonging to or in the custody of a bank which is  
15 insured by the Federal Deposit Insurance  
16 Corporation. This federal statute is known as  
17 Title 18, U. S. Code, Section 2113(b), and reads,  
18 in pertinent part, as follows:

19 "Whoever takes and carries away, with intent  
20 to steal or purloin, any property or money or any  
21 other thing of value exceeding \$100 belonging to,  
22 or in the care, custody, control, management, or  
23 possession of any bank...(shall be punished)."

24 The defendant is also charged with a violation of  
25 this federal statute or law.

1  
2 Now, federal law makes it a separate crime  
3 for anyone who commits the offense charged in  
4 count one to jeopardize the life of any person by  
5 the use of a dangerous weapon. Specifically,  
6 that statute -- and the defendant is charged with  
7 violating it -- reads as follows:

8 "Whoever, in committing...any offense  
9 defined in subsection(s) (a)," which is one of  
10 the charges in this case, "...puts in jeopardy  
11 the life of any person by the use of a dangerous  
12 weapon...(shall be guilty of a crime)."

13 The defendant is also charged with a violation of  
14 this federal statute or law.

15 Now, these charges of violation of federal  
16 law by the defendant are set forth in an indictment.

17 Before I read the indictment to you, I should  
18 like to point out the function of an indictment.

19 An indictment by a grand jury is the formal  
20 method of accusing this defendant of a certain  
21 crime or crimes. It merely defines the crime or  
22 crimes charged and the manner of their alleged  
23 accomplishment. The indictment is without bearing  
24 or significance in your consideration of this  
25 case and it is to be accorded no weight by you in



1  
2 determining the guilt or innocence of this  
3 defendant. By his pleas of not guilty, the  
4 defendant has denied each and every allegation set  
5 forth in the indictment.

6 The indictment reads as follows:

7 The grand jury charges in Count One that  
8 on or about the 18th day of February, 1975, in  
9 the District of Connecticut, William Gene Robinson,  
10 by force and violence and by intimidation, did  
11 take from the person and presence of Retta  
12 Mondulick about \$2,034 in money belonging to and  
13 in the care, custody, control, management, or  
14 possession of the Connecticut National Bank, the  
15 deposits of which were then insured by the  
16 Federal Deposit Insurance Corporation, in viola-  
17 tion of federal law;

18 Count Two, that on or about the 18th day of  
19 February, 1975, in the District of Connecticut,  
20 William Gene Robinson did take and carry away,  
21 with intent to steal and purloin, from the  
22 Connecticut National Bank, the deposits of which  
23 were then insured by the Federal Deposit Insurance  
24 Corporation, the sum of about \$2,034 belonging to  
25 and in the care, custody, control management and

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1  
2 possession of the bank, in violation of federal  
3 law;

4 Count Three, on or about the 18th day of  
5 February, 1975, in the District of Connecticut,  
6 William Gene Robinson, by force and violence and  
7 by intimidation, did take from the person and  
8 presence of Retta Mondulick about \$2,034 in money  
9 belonging to and in the care, custody, control,  
10 management and possession of the Connecticut  
11 National Bank, the deposits of which were then  
12 insured by the Federal Deposit Insurance  
13 Corporation, and William Gene Robinson, in  
14 committing that offense, did put in jeopardy the  
15 life of the said Retta Mondulick by means and use  
16 of a dangerous weapon--that is, a shotgun and a  
17 revolver--in violation of federal law.

18 Now, there are two general types of evidence  
19 which you may consider. One is direct evidence,  
20 such as the testimony of eyewitnesses. The other  
21 is circumstantial evidence; that is, the proof of  
22 a chain of circumstances pointing to the commission  
23 of the offense.

24 Circumstantial evidence may be received and  
25 is entitled to such consideration as you may find



1  
2 it deserves depending upon the inferences you  
3 think it necessary and reasonable to draw from  
4 such evidence. No greater degree of certainty is  
5 required when the evidence is circumstantial than  
6 when it is direct, for in either case the jury  
7 must be convinced beyond a reasonable doubt of  
8 the guilt of the defendant. Circumstantial  
9 evidence consists of facts proven from which the  
10 jury may infer by a process of reasoning other  
11 facts sought to be established as true.

12 Different inferences, however, may be drawn  
13 from the facts and circumstances in the case,  
14 whether proved by direct or circumstantial  
15 evidence. The prosecution asks you to draw one  
16 set of inferences while the defendant asks you to  
17 draw another. It is for you to decide, and for  
18 you alone, which inferences you will draw from the  
19 proven facts.

20 The burden to prove the defendant guilty of  
21 the crimes with which he is charged is upon the  
22 Government. The defendant does not have to prove  
23 his innocence. This means that the Government  
24 must prove beyond a reasonable doubt each and  
25 every essential element necessary to constitute

1  
2 the crime charged. Whether the burden of proof  
3 resting upon the Government is sustained depends  
4 not on the number of witnesses nor on the quantity  
5 of the testimony but on the nature and quality of  
6 the testimony.

7 In this case, Ladies and Gentlemen, as in  
8 all criminal prosecutions, the defendant is  
9 presumed to be innocent until proven guilty beyond  
10 a reasonable doubt. This presumption of  
11 innocence was with this defendant when he was  
12 first presented for trial in this case. It  
13 continues with him throughout the trial. As far  
14 as you are concerned, he is innocent and he  
15 continues to be innocent unless and until such  
16 time as all the evidence produced here in the  
17 orderly course of the case, considered in the  
18 light of these instructions of law and deliberated  
19 upon by you in the jury room, satisfy you beyond a  
20 reasonable doubt that he is guilty. Thus, the  
21 presumption of innocence alone is sufficient to  
22 acquit the defendant unless the jurors are  
23 satisfied beyond a reasonable doubt of his guilty  
24 from all the evidence in the case.

25 Now, a reasonable doubt means a doubt founded



1  
2 upon reason. As the words imply, it is a doubt  
3 as will be entertained by a reasonable person  
4 after all the evidence in the case is carefully  
5 analyzed, compared and weighed by you. A  
6 reasonable doubt may arise not only from the  
7 evidence produced but also from a lack of  
8 evidence. Since the burden is upon the Government  
9 to prove a defendant guilty beyond a reasonable  
10 doubt of every essential element of the crime  
11 charged, a defendant has a right to rely upon a  
12 failure of the prosecution to establish such  
13 proof. However, absolute or mathematical  
14 certainty is not required, but there must be  
15 such certainty as satisfies your reason and  
16 judgment and such that you feel conscientiously  
17 bound to act upon it. It is not a fanciful  
18 doubt or a whimsical or capricious doubt, for  
19 anything relating to human affairs depends upon  
20 human testimony and is open to some possible or  
21 imaginary doubt. Reasonable doubt is the kind  
22 of a doubt upon which reasonable men or women like  
23 yourselves, in the more serious and important  
24 affairs in their own lives, would hesitate to act.  
25 On the other hand, if all the evidence has been

1  
2 impartially and thoroughly reviewed by you and if  
3 it produces in your minds a settled and abiding  
4 conviction as you would be willing to act upon  
5 in matters of the highest importance relating to  
6 your own affairs, then in that event you would  
7 be free from reasonable doubt. If the evidence  
8 warrants, in your judgment, the conclusion that  
9 the defendant is guilty so as to exclude every  
10 other reasonable conclusion, you should declare  
11 him to be guilty, but if on all the evidence you  
12 have a reasonable doubt as to his guilt, you must  
13 find him not guilty.

14 Now, in performing your function, one of  
15 the most important things you have to do is pass  
16 upon the matter of credibility; that is, the  
17 believability of the various witnesses who have  
18 appeared before you. In passing on the  
19 credibility of each of the witnesses, there are  
20 certain considerations you may well have in mind.  
21 One of these is the appearance which the witness  
22 made when he or she was on the stand; you should  
23 try to size that person up. Did the person  
24 appear to be telling the truth? Did the person  
25 appear to be honest? Did the person appear to be



1  
2 intelligent? That is, did the person appear to  
3 you to be one who could have observed accurately  
4 what he is telling you about, who would be likely  
5 to have remembered it accurately, and who was  
6 capable of reporting it to you accurately?

7 Another question for you to have in mind  
8 regarding each witness is the question as to  
9 whether the story he has told you is plausible.  
10 Does it ring true? Are there inconsistencies in  
11 it? How does it fit in with all the other  
12 evidence in the case which you do believe and  
13 other facts you find to have existed? Does it  
14 jibe with that evidence and those facts? In  
15 short, does the testimony which was given by a  
16 particular witness whose credibility you are  
17 considering seem to you to be plausible?

18 In this connection, you should also bear in  
19 mind that if you find that any witness has been  
20 deliberately falsifying on one material point in  
21 his testimony you are privileged to take that  
22 fact into consideration in determining whether he  
23 has falsified on other points. However, simply  
24 because you find that a witness has not repeated  
25 one fact to you accurately does not necessarily

1  
2 follow that he is wrong on every other point.

3 A witness may be honestly mistaken on one element  
4 of his testimony and be entirely accurate and  
5 correct on other points. A witness may even be  
6 deliberately falsifying on one point and yet be  
7 entirely truthful on all other points. But, if  
8 you find that the witness has deliberately lied  
9 on one material subject, it is only natural you  
10 should be suspicious of his testimony on all  
11 subjects, and under those circumstances you are  
12 entitled to disbelieve his whole testimony.

13 Whether you do disbelieve it or not lies in your  
14 own sound judgment. You have the right to reject  
15 testimony even though it is uncontradicted if you  
16 feel you have a justifiable reason for doing so.

17 Another question you may ask in passing on  
18 the credibility of any witness is whether that  
19 witness has any bias or interest in the outcome  
20 of the case and, if so, whether he has permitted  
21 that bias or interest to color his testimony.

22 It, of course, does not necessarily follow that  
23 a witness who does have a bias or does have an  
24 interest in the outcome of the case is to be  
25 disbelieved. There are many people who, no



1  
2 matter what their interest in the outcome of a  
3 case may be, would not testify falsely. On the  
4 other hand, the jury should always bear in mind  
5 that if a witness has a decided bias or has an  
6 interest in the outcome of the case, that bias or  
7 interest offers something of a temptation to shade  
8 his own testimony in accordance with his bias or  
9 sway him to advance his own interests, whether  
10 that be to gain some advantage to himself or to  
11 damage another.

12 In short, you are to bring to bear upon the  
13 issue of credibility the same considerations and  
14 use the same sound judgment you apply to questions  
15 of truth and veracity which are daily presenting  
16 themselves for your decision in the ordinary  
17 affairs of life.

18 With respect to eyewitness identification of  
19 the defendant as a participant in the crimes, the  
20 Government, of course, has the burden of proof on  
21 this issue. To aid you in your deliberations, I  
22 will instruct you now on the law of identifica-  
23 tion, because, as you know, one of the most  
24 important issues in this case is the identifica-  
25 tion of the defendant as a perpetrator of the

1  
2 crimes.

3 It is not necessary that the witness be  
4 free from all doubt as to the correctness of the  
5 identification. However, you, the jury, must be  
6 satisfied beyond a reasonable doubt of the  
7 accuracy of the identification of the defendant  
8 before you may convict him. If you are not  
9 convinced beyond a reasonable doubt that the  
10 defendant was the person who committed the crimes,  
11 you must find the defendant not guilty.

12 Identification testimony is an expression  
13 of belief or impression by the witness. Its  
14 value depends upon the opportunity the witness had  
15 to observe the offender at the time of the  
16 offenses and to make reliable identification  
17 later.

18 In appraising the identification testimony  
19 of a witness, you should consider the following:


20 First, are you convinced that the witness  
21 had the capacity and an adequate opportunity to  
22 observe the defendant? Whether the witness had  
23 an adequate opportunity to observe the defendant  
24 at the time of the offense will be affected by  
25 such matters as how long or how short a time was



1  
2 available to observe, how close or how far the  
3 witness was and how good were the lighting  
4 conditions.

5 Second, are you satisfied that the  
6 identification made by the witness subsequent to  
7 the offenses is the product of his own  
8 recollection? Thus, you should take into  
9 account both the strength of the identification  
10 and the circumstances under which the identifica-  
11 tion was made. If the identification by the  
12 witnesses may have been influenced by  
13 circumstances under which the defendant was  
14 presented for identification, you should  
15 scrutinize the identification with great care.

16 You may also consider the length of time  
17 that elapsed between the occurrence of the crimes  
18 and the next opportunity of the witness to see  
19 the defendant as a factor bearing upon the  
20 reliability of the identification. In this  
21 regard, you may consider whether or not the  
22 circumstances and procedures surrounding the  
23 photographic identifications were so impermissibly  
24 suggestive that the in-court identifications are  
25 unreliable. It is for you to decide whether or

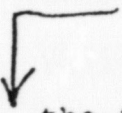
1  
2 not the eyewitnesses' in-court identification  
3 rested on original, untainted observation. 

4 Four, finally, you must consider the  
5 credibility of each identification witness in the  
6 same way as any other witness.

7 Now, counsel have commented on the  
8 testimony of David Tate. He has been referred  
9 to as an accomplice. An accomplice is one who  
10 voluntarily participated in the commission of a  
11 crime. An accomplice does not become  
12 incompetent as a witness because of his participa-  
13 tion in the crimes charged. In fact, the  
14 testimony of an accomplice alone, if believed by  
15 the jury beyond a reasonable doubt, may be  
16 sufficient to sustain a verdict of guilty.  
17 However, his testimony should be carefully  
18 examined and weighed with great caution and care.  
19 An accomplice's testimony implicating the  
20 defendant as a perpetrator of a crime or crimes  
21 is inherently suspect because the accomplice may  
22 have an important personal stake in the outcome  
23 of the trial. An accomplice so testifying may  
24 believe that the defendant's acquittal will  
25 vitiate expected rewards that may have been



1  
2 either explicitly or implicitly promised him in  
3 return for his testimony. Therefore, examine  
4 an accomplice's testimony cautiously and  
5 carefully, check the testimony with the facts  
6 which you find to have existed in this case,  
7 and then give the testimony such weight as you  
8 deem proper under all the circumstances.

9  
10  Now, in this regard, you have heard that  
11 the federal prosecutor promised David Tate that,  
12 in return for his testimony in this case, the  
13 Government would recommend that Mr. Tate be  
14 incarcerated in a suitable prison, that the  
15 Government would not oppose Tate's motion for  
16 reduction of sentence and would make known his  
17 cooperation to the Board of Parole, and by his  
18 testimony the sentence of contempt would terminate.

19 A further word is appropriate on the motion  
20 for reduction of sentence. As you know, Mr.  
21 Tate received a ten-year sentence for bank  
22 robbery, and that he has filed a motion to reduce  
23 that sentence. Whether that sentence is reduced  
24 in any way -- that is, by a day, a month, a year  
25 or longer -- rests within the sole discretion and  
judgment of this Court. The Government has no

1  
2 power to change the sentence imposed by this  
3 Court, and, as you know, I have not ruled on the  
4 motion yet. I will do so at a later date, in  
5 the ordinary course of court business, at which  
6 time I will, of course, take into consideration  
7 what any interested party may wish to say,  
8 including the Government.

9       The fact that the Government has made such  
10 promises and arrangements with Mr. Tate does not  
11 in and of itself render his testimony incompetent  
12 or not entitled to be believed. The Government  
13 has the right to make promises to a witness in  
14 exchange for testimony, and therefore the fact  
15 that promises have been extended to a witness in  
16 order to secure his testimony should only enter  
17 your deliberations as another factor to be  
18 weighed on the issue of credibility of the  
19 witness. Of course, if you find that a witness  
20 is testifying in order to gain a personal  
21 advantage or benefit, you must examine that  
22 testimony with greater care and caution than the  
23 testimony of a disinterested witness.

24       Another principle governing credibility is  
25 that the testimony of a witness may be discredited



1  
2 or impeached by showing that he has been convicted  
3 of a felony. Prior convictions do not render a  
4 witness incompetent to testify; it merely reflects  
5 on credibility. It is the province of the jury  
6 to determine what weight, if any, should be given  
7 to prior convictions for purpose of impeachment.

8 I also instruct you that a witness may be  
9 discredited or impeached by contradictory  
10 evidence or by evidence that at other times he  
11 made statements which are inconsistent with his  
12 present testimony. If you find that any witness  
13 has been so impeached, then give that testimony  
14 such credibility, if any, as you think it  
15 deserves. You may reject all the testimony or  
16 you may accept such part of the testimony as you  
17 find to be credible.

18 Also, there is testimony in this case given  
19 by law enforcement agents. The testimony of such  
20 officers is entitled to no special or exclusive  
21 sanctity merely because it comes from an officer  
22 of the law. An officer or agent who takes the  
23 witness stand subjects his testimony to the same  
24 examination and the same tests that any other  
25 witness does, and you should not believe them

1  
2 merely because they are law enforcement agents.  
3 You should recall their demeanor on the stand,  
4 their manner of testifying, the substance of their  
5 testimony, and weigh it and balance it just as  
6 carefully as you would the testimony of any other  
7 witness.

8 With respect to the defendant, you should  
9 test his credibility under the same principles  
10 you apply to any other witness. An accused  
11 person is not obliged to take the stand in his  
12 own behalf, but he does have a perfect right to  
13 do so, as this defendant has done in this case.  
14 An accused person, having taken the witness  
15 stand, is before you as any other witness;  
16 therefore, his testimony should be measured in the  
17 same way as any other witness.

18 It is appropriate at this time for me to  
19 comment on another aspect of the defendant's case.  
20 You will recall that there was testimony that the  
21 defendant was at Ernie's Smoke Shop, a store on  
22 Stratford Avenue, Bridgeport, at the date and  
23 time of the bank robbery. This defense is known  
24 in law as an alibi. An alibi is a legal and  
25 proper defense, and if, after consideration of



1  
2 all the evidence in the case, you have a  
3 reasonable doubt as to whether the defendant was  
4 present at the time and place the bank robbery  
5 was committed, you must acquit him.

6 In weighing the credibility of any expert  
7 witness who testified in this case, you are to  
8 apply the same considerations you apply to the  
9 testimony of any other witness.

10 One last matter: In your deliberations as  
11 to the guilt or innocence of this defendant,  
12 please do not consider the matter of punishment.  
13 That matter is for the Court and not the jury.

14 Now, each of the separate offenses charged  
15 in this indictment has certain essential elements  
16 which I will describe to you. The Government  
17 has the burden to prove every element necessary  
18 to constitute each of the crimes charged. You  
19 should consider each count of the indictment  
20 separately and determine whether the Government  
21 has met its burden of proof on each of the  
22 essential elements of that count. The fact that  
23 you may find that the defendant Robinson is guilty  
24 or not guilty on one of the offenses charged  
25 should not control your verdict with respect to

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the other offenses.

Count One:

There are five essential elements of the crime charged in Count One of the indictment, each of which the Government has the burden of proving beyond a reasonable doubt. They are:

One, that the defendant Robinson robbed the Connecticut National Bank in Shelton on February 18, 1975;

Two, that the robbery involved money taken from the person or presence of another;

Three, that the money was taken by force and violence or by intimidation;

Four, that such money belonged to or was in the care, custody, control or possession of the bank, the deposits of which were insured by the Federal Deposit Insurance Corporation;

And, five, that the defendant Robinson on that date acted wilfully.

I suggest that in determining whether Count One of the indictment has been proven beyond a reasonable doubt you ask yourselves five questions:

First, did the defendant Robinson rob the Connecticut National Bank in Shelton on February



1  
2 18, 1975?

3 At the very outset of your deliberations,  
4 therefore, you must decide whether the Government  
5 proved beyond a reasonable doubt that the  
6 defendant Robinson robbed the Connecticut National  
7 Bank on February 18, 1975. If the Government has  
8 failed to sustain its burden of proof, the case  
9 is over. You should therefore return a verdict  
10 of not guilty. On the other hand, if you find  
11 that the Government has sustained its burden of  
12 proof on this issue, then you should proceed to  
13 consider the next essential element of the crime  
14 charted in Count One, which I will pose to you in  
15 a moment.

16 On this first essential element, I am not  
17 going to dwell on the evidence. The trial was a  
18 short one, the issues of identification and  
19 implication have been concisely joined by the  
20 parties during the trial, and the evidence has  
21 been thoroughly reviewed in the summations by  
22 counsel. Any further review of the factual  
23 contentions by me will, I fear, merely tax your  
24 patience.

25 Now, the defense, as you know, denies the

Government has sustained its burden of proof.

As I did not comment on or review the Government's factual contentions, I am not going to review the defendant's factual contentions. I trust you remember them and will consider them under the instructions I have just given you.

If you should find that the Government has sustained its burden of proof on this issue, then you should proceed to consider the second essential element of the crime charged in Count One, reflected in this question:

Second, did the robbery involve money taken from the person or presence of another?

You must decide whether the Government has shown beyond a reasonable doubt that at that bank on that date there was a seizure, a removing or carrying away of money from the person or presence of another. You will note that this element of the crime requires the taking of money either from the person of another or from the presence of another; for example, if you find beyond a reasonable doubt that money was taken from a teller's drawer or drawers at the bank, in the presence of a bank teller or other bank



1  
2 employee, that would satisfy the requirement of  
3 this essential element of the crime charged.

4 If the Government has failed to sustain its  
5 burden of proof on this issue, you should return a  
6 verdict of not guilty on Count One.

7 On the other hand, if you find the  
8 Government has sustained its burden on this issue,  
9 then you should proceed to consider the next  
10 essential element of the crime charged in Count  
11 One, reflected in this question:

12 Third, was the money taken by force and  
13 violence or by intimidation?

14 By force and violence is meant the use of  
15 physical pressure or constraint. It means such a  
16 display of physical powers as is calculated to  
17 inspire fear of physical harm to anyone opposing  
18 the will of the person exerting the force.  
19 Force and violence does not necessarily mean  
20 actual physical contact, although that may be  
21 involved. Any conduct which is intended to cause  
22 bodily fear or terror is sufficient to  
23 constitute force and violence as used in this  
24 statute.

25 Intimidation has a somewhat, although not

altogether, different meaning. Intimidation is generally referred to as constructive force. In general, it means to put into fear or to inspire with fear. This fear or terror may be inspired without physical violence or even spoken threats. It may be accomplished merely by a menacing attitude and a display of force. Threats by words or by gesture may constitute intimidation if the effect of such words or gestures is to put in fear of physical harm the person toward whom they are directed.

This putting in fear must arise from the conduct of the defendant rather than the mere timidity of the person in whose presence or from whom the taking of money occurred. But this fear need not be so great as to result in terror, panic or hysteria.

In this connection, it is reasonable to infer that confrontation with a dangerous weapon, such as a gun, will place the person so confronted in sufficient fear to cause intimidation as used in the statute. There need be no proof of actual fear. The fear, rather, may be inferred where there is just cause for it.



1  
2  
3 It should be emphasized that it is not  
4 necessary for you to find that the taking of  
5 money was accomplished by means of both force  
6 and intimidation. The taking of money by either  
7 force or intimidation is sufficient to comply  
8 with the requirements of the statute.

9 If the Government has failed to sustain its  
10 burden of proof on this issue, you should return  
11 a verdict of not guilty.

12 On the other hand, if you find the  
13 Government has sustained its burden of proof on  
14 this issue, then you should proceed to consider  
15 the next essential element of the crime charged  
16 in Count One, reflected in this question:

17 Did the money belong to or was it in the  
18 care, custody, control, management or  
19 possession of the bank, the deposits of which were  
20 insured by the Federal Deposit Insurance Corpora-  
21 tion?

22 The terms "belong to," "care of," "custody,"  
23 "control," "possession" and "management" as used  
24 here have their ordinary meaning and should be so  
25 applied by you.

If you find the Government has sustained its

1  
2 burden on this issue, then you must deliberate  
3 further on the remaining part of this fourth  
4 question, and that is: Did the Government prove  
5 beyond a reasonable doubt that the money was  
6 insured by the Federal Deposit Insurance Corpora-  
7 tion?

8 The very definition of a bank under the  
9 statute that I read to you a few moments ago  
10 requires that the bank be insured by the Federal  
11 Deposit Insurance Corporation, and the Government  
12 must prove this beyond a reasonable doubt; and I  
13 believe there is an exhibit in evidence that may  
14 help you on that issue.

15 If you find the Government has not proven  
16 this fourth essential element beyond a reasonable  
17 doubt, you should return a verdict of not guilty.

18 On the other hand, if you find the Government  
19 has proven this essential element beyond a  
20 reasonable doubt, then you should proceed to  
21 consider the next and final essential element of  
22 the crime charged in Count One, reflected in this  
23 question:

24 Did the defendant act wilfully?

25 The defendant would have acted wilfully only



1  
2 if his act was voluntarily and purposely, with a  
3 specific intent to do that which the law forbids,  
4 or voluntarily and purposely, with a specific  
5 intent to omit to do an act or fulfill an  
6 obligation, knowing that such act or obligation  
7 was required by law.

8 You must decide whether the Government has  
9 proven beyond a reasonable doubt that the defendant  
10 acted wilfully and with specific intent.

11 If the Government failed to sustain its  
12 burden of proof on this issue, you should return a  
13 verdict of not guilty on Count One.

14 On the other hand, if you find the Government  
15 has sustained its burden of proving that the  
16 defendant acted wilfully and with specific intent  
17 to steal, and if you find that the Government has  
18 proven beyond a reasonable doubt each of the other  
19 essential elements of the crime charged in Count  
20 One, then you should find the defendant guilty as  
21 charged in that count.

22 With respect to Count Two, there are also  
23 five essential elements, each of which the  
24 Government has the burden of proving beyond a  
25 reasonable doubt. If you find the Government has

1  
2 not sustained its burden with regard to any one  
3 element, then the defendant must be acquitted of  
4 the crime charged in this count of the indictment.

5 The five essential elements are:

6 One, that the defendant Robinson robbed  
7 the Connecticut National Bank on February 18th. I  
8 have already discussed the principles you should  
9 apply with that element, and I won't repeat them  
10 again;

11 That the money robbed and carried away from  
12 the bank on that date exceeded the sum of \$100.  
13 I believe that is self-explanatory;

14 Three, that such money belonged to or was  
15 in the care, custody, control, management or  
16 possession of the bank on that date. I have  
17 already gone over that essential element with you  
18 and won't repeat the instructions on that;

19 Four, that the deposits of that bank on that  
20 date were insured by the Federal Deposit Insurance  
21 Corporation. I have gone over that with you, and  
22 I will not repeat it again;

23 Five, that the defendant acted wilfully and  
24 with intent to steal; and I have been over that  
25 instruction with you and I do not believe I have



1  
2 to repeat that. I trust you will remember it.

3 If you find the Government has failed to  
4 sustain its burden of proof on this issue, on  
5 Count Two, any one or more of the essential  
6 elements on Count Two, you should return a verdict  
7 of not guilty on Count Two.

8 On the other hand, if you find the Government  
9 has sustained its burden of proving that the  
10 defendant acted wilfully, with specific intent,  
11 and if you find that the Government has proven  
12 beyond a reasonable doubt each one of the essential  
13 elements I have just gone over with you, then you  
14 should find the defendant guilty as charged on  
15 that count.

16 Count Three:

17 There are three essential elements of the  
18 crime charged in Count Three of the indictment,  
19 each of which the Government has the burden of  
20 proving beyond a reasonable doubt before there  
21 can be a conviction of the defendant:

22 First, that the defendant did commit the  
23 offense charged in Count One of the indictment  
24 and that you have found the defendant guilty on  
25 that count;

Two, that in committing the offense charged in Count One the life of a person was in jeopardy because of the use of a dangerous weapon;

And, three, that the defendant acted wilfully and with specific intent.

I suggest you ask yourselves three questions with respect to this third count:

First, did the defendant commit the offense charged in Count One of the indictment and have you found the defendant guilty as charged therein?

Obviously, before you may find the defendant guilty on Count Three, you must first have found him guilty on Count One. You may remember that is the count charging him for having taken by force and violence or by intimidation from the person or presence of another money belonging to or in the custody of the bank, the deposits of which were insured by the Federal Deposit Insurance Corporation.

If you have found the defendant not guilty on Count One, you must return a verdict of not guilty on Count Three.

The mere fact that I am charging you on Count Three is not intended as an indication



1  
2  
3 whatsoever of how the Court anticipates you will  
4 find on Count One. But, if you find that the  
5 defendant is guilty of the charge on Count One,  
6 then you should proceed to consider the second  
7 essential element charged in Count Three,  
8 reflected in this question:

9 Second, was the life of any person put in  
10 jeopardy by the use of a dangerous weapon?

11 A dangerous weapon includes anything  
12 capable of being readily operated and manipulated,  
13 wielded or otherwise used by one or more persons  
14 to inflict severe bodily harm or injury upon  
15 another person. Therefore, an operable firearm,  
16 a pistol, a revolver or any other gun capable of  
17 firing a bullet or other ammunition may be found  
18 to be a dangerous weapon.

19 To put in jeopardy the life of a person by  
20 the use of a dangerous weapon means to expose  
21 such person to risk of death by use of a dangerous  
22 weapon. Fear of death is not enough; there must  
23 be proof that lives were objectively endangered.  
24 On this issue you may consider whether or not the  
25 guns were loaded.

If the Government has failed to sustain its

burden of proof on this issue, you should return a verdict of not guilty on Count Three.

On the other hand, if you find the Government has sustained its burden of proving that the defendant put in jeopardy the life of any person by the use of a dangerous weapon, then you should proceed to consider the next and final essential element of the crime charged in Count Three; and that is:

Third, did the defendant act wilfully?

I have previously defined the term "wilfully" and will not repeat it here.

If the Government has failed to sustain its burden of proof on this issue, you should return a verdict of not guilty on Count Three.

If the Government has failed to sustain its burden of proof on any essential element of the crime charged in Count Three, you should return a verdict of not guilty, but if you find that the Government has sustained its burden of proof on this issue and if you have found that the Government has proven beyond a reasonable doubt each of the other essential elements of the crime charged in Count Three, then I should find the

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defendant guilty as charged on this count.

Finally, it is appropriate for me at this time to instruct you on a principle of law that is applicable in your consideration of all the charges against this defendant which I have just discussed with you; in other words, this charge I am about to give you is applicable to Counts One, Two and Three.

The rule of law that I should bring to your attention comes into play when the Government claims a criminal act was committed which involved more than one person. As you know, the Government contends that the robbery of the Connecticut National Bank in this case was committed by three men, one of whom was the defendant, it is claimed.

Now, there is an element in each of the three crimes with which this defendant is charged that requires a participant in the robbery to do something. In Count One, he had to take money by force and violence or by intimidation, in Count Two he had to take from the bank money in excess of \$100, and in Count Three he had to jeopardize the life of Retta Mondulick by the use

of a dangerous weapon.

Now, I instruct you that the Government does not have to prove that it was the defendant individually who took these actions. If you find beyond a reasonable doubt that the defendant was one of the three participants in the robbery and if you further find beyond a reasonable doubt that the three robbers were all engaged in a joint venture, the object of which was to rob the bank, then you may find that the actions of any one of them in the bank may be attributed to the other two, and each of them may be found to have done what any one of them has done.

For example, if you find that one of the robbers jeopardized the life of Retta Mondulick with a dangerous weapon and if you find that the defendant was participating with that robber in a joint venture to rob the bank and if you are persuaded of that beyond a reasonable doubt, then you would be entitled to conclude that the defendant jeopardized the life of Retta Mondulick with a dangerous weapon, whether or not the defendant was the one who actually pointed the loaded gun at her. This is true for the taking



1  
2 of money.

3 The rule does not alter in any way what I  
4 have previously told you, that before you may  
5 find the defendant guilty on any of these counts  
6 you must be satisfied beyond a reasonable doubt  
7 that each element of the crime has been estab-  
8 lished.

9 In conclusion, Ladies and Gentlemen, I  
10 impress upon you that you are duty-bound as  
11 jurors to apply the law as you have been advised  
12 by the Court to the facts of this case as you find  
13 them.

14 Take this case with you to the jury room.  
15 Determine the facts on the basis of the evidence  
16 as it has been presented to you. Apply the law  
17 as I have outlined it to you. Then render your  
18 verdict fairly, uprightly, and without a  
19 scintilla of prejudice.

20 When you reach your verdicts, they must be  
21 unanimous. It is the duty of each juror to  
22 discuss and consider the opinions of the other  
23 jurors. Despite that, in the last analysis, it  
24 is your individual duty to make up your own mind  
25 and to decide this case upon the basis of your own

individual judgment.

With that, the jury may now retire to the jury room. Mr. Prete will take you there, or maybe a deputy marshal. Elect a foreman or forelady after the exhibits are brought in; in other words, when you go into your jury room, do not do anything, just relax until we bring in the exhibits. Then, when the exhibits are brought in and you are alone, proceed to your deliberations after you elect a foreman or forelady. You must render a separate verdict on each of the counts of the indictment. When you have reached your verdicts, inform the Clerk through the bailiff--and he will be right outside the door; then return to the courtroom and announce your verdicts.

The verdicts will be oral. Your foreman or forelady will stand up, the Clerk will say "How do you find the defendant on Count One," and your foreman or forelady will say "Guilty" or "Not guilty." And the same with Count Two and Count Three.

I mentioned that the exhibits will be brought in, and, of course, as you know, the film



1  
2 was one of the exhibits, and we also have the  
3 projector available if for any reason you want to  
4 use it. I do not think it was marked as an  
5 exhibit, but you can have it if you want it.

6 Lastly, I will now excuse the two alternates,  
7 Mr. Santopietro and Mrs. McGuire. It is in a way  
8 a bit disappointing that you sat through this whole  
9 trial and cannot deliberate with your colleagues,  
10 but you did serve a valuable purpose, I believe.  
11 As I explained, if any one of the jurors became  
12 ill, you would have taken his or her place and  
13 avoided a mistrial. So you are now excused.  
14 You no longer participate in this case. And, of  
15 course, the twelve should not deliberate in the  
16 presence of anyone else except the twelve.

17 However, I believe lunch is coming in for  
18 you. Mr. Prete will find a place for you to  
19 have your lunch.

20 I am going to pick another jury in another  
21 case while this jury is deliberating. So, if  
22 you would like to be considered for the next jury,  
23 they will be in 314 A, and I am going to  
24 take about a fifteen- or twenty-minute recess,  
25 half-hour recess, and then I will pick another

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1  
2 jury. In fact, what I may do is excuse the jury  
3 until two o'clock -- I will think about that.  
4 Why don't you sit here for a moment, the two  
5 alternates.

6 I will excuse the twelve. They can go into  
7 the jury room, and Mr. Prete will take you there  
8 now. As soon as the exhibits are brought in,  
9 start your deliberation.

10 (Jury excused at 12:08 o'clock p.m.)

11 THE COURT: I will take exception to the  
12 charge.

13 MR. PICKERSTEIN: The Government is content.  
14 No exception.

15 THE COURT: Defendant.

16 MR. CRAIG: My exceptions only have to do  
17 with the requests that I made prior to the charge.

18 I would specifically ask that two sentences  
19 be given from the proposed instruction of the  
20 four. I think the language is right out of  
21 Simmons versus United States:

22 "Even if the police followed the most  
23 correct photographic identification procedures  
24 and showed him the picture of a number of  
25 individuals without indicating whom they suspected,



1  
2 there is some danger that the witness may make  
3 an incorrect identification."

4 That is the second sentence.

5 The other sentence I would request is:

6 "Regardless of how the initial misidentifica-  
7 tion comes about, the witness thereafter is apt  
8 to retain in his memory the image of the  
9 photograph rather than of the person actually  
10 seen, reducing the trustworthiness of a subsequent  
11 lineup or courtroom identification."

12 As a supplement to that, your Honor, I would  
13 request specifically that the instruction  
14 requested in number twelve with respect to  
15 eyewitness identification, which is language  
16 taken from U. S. ex rel versus Foley also be  
17 given.

18 THE COURT: With respect to instruction  
19 number four and instruction number twelve, I have  
20 no particular quarrel with the language. It is  
21 just that I believe that I covered the  
22 identification areasatisfactorily and fully by  
23 the charge I did give the jury and by accepting  
24 your instruction number eleven, which I did. I  
25 practically charged that verbatim.

1  
2 MR. CRAIG: Yes, you did.

3 THE COURT: I feel it was covered  
4 sufficiently in my charge and by eleven, and the  
5 other two instructions that you mentioned, while  
6 I have no quarrel with the law as set forth, I  
7 find it is not necessary and I have covered the  
8 subject adequately.

9 Anything else?

10 MR. CRAIG: That's it.

11 THE COURT: Very well.

12 MR. PICKERSTEIN: Is your Honor going to  
13 send a copy of the indictment into the jury room?

14 THE COURT: I will do whatever you want on  
15 that.

16 MR. PICKERSTEIN: I have a clean copy. I  
17 think your Honor read it to them. It probably  
18 should be sent in, but I will abide by the  
19 defendant's wishes.

20 MR. CRAIG: Could I see the copy that you  
21 are sending?

22 THE COURT: I want to bring up, before the  
23 exhibits are sent into the jury room, I would  
24 like Mr. Pickerstein and Mr. Craig to go over  
25 those exhibits with the Clerk to make sure that



UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA

v.

WILLIAM GENE ROBINSON

Criminal No. N-75-20

AFFIDAVIT OF PERSONAL PREJUDICE

I, GREGORY B. CRAIG, being duly sworn, do hereby depose and say:

(1) I am an Assistant Federal Public Defender in the Office of the Federal Public Defender for the District of Connecticut with offices located at 770 Chapel Street, New Haven, Connecticut.

(2) I represent the defendant, William Gene Robinson, in the above-captioned case.

(3) The defendant is charged in a three-count indictment with robbing the Trap Falls branch of the Connecticut National Bank in Shelton, Connecticut on February 18, 1975 in violation of Title 18, United States Code, Sections 2113(a), (b) and (d). The original indictment in this case also charged David James Tate as being a participant in the afore-mentioned bank robbery.

(4) On June 9, 1975, Mr. Tate, originally a co-defendant in this case, entered a plea of guilty to Count Two of the indictment charging him with violating Title 18, United States Code, Section 2113(b). The maximum sentence authorized by this provision of the federal criminal code is a fine of not more than \$5000 or imprisonment of not more than ten years or both.

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(5) On June 10 - 13, 1975, the defendant Robinsen was tried before the Honorable Jon O. Newman, United States District Court Judge for the District of Connecticut. The jury failed to reach a verdict, and on June 13, 1975, a mistrial was declared. The co-defendant Tate refused to testify for the Government at that trial.

(6) On September 9, 1975, the Honorable Robert C. Zampano, United States District Court Judge for the District of Connecticut, sentenced David James Tate to the maximum period of time of incarceration permissible under Title 18, United States Code, Section 2113(b), that is, ten years imprisonment. At the time of sentencing, Judge Zampano stated, inter alia,

There are a lot of other factors. ~~is~~ that the court must consider than ~~than~~ repentance and a desire to do right.

I have to consider the fact that three men went into a bank with shotguns and -- in fact, one cocked a revolver and pointed it at one of the tellers. I am not saying you did -- I am saying this was the atmosphere -- that money was taken in a hold-up; that this was done, at least with respect to you, with a long prior record, at least a serious record.

In addition, there has been no co-operation whatever. You may have your own solid reasons for it, and I am not taking that into account in the sentencing. But you certainly have not demonstrated to me that you are now rehabilitated. You want to be a great citizen of this country, and yet two bank robbers are out there going scot free because you refuse to co-operate. I think tremendous leniency has been shown to you when the Government reduced the charges to limit me to ten years.  
(Emphasis added)



(7) On September 18, 1975, the Government brought David James Tate before a federal grand jury seated in Hartford, Connecticut. Mr. Tate refused to answer questions about the bank robbery and, upon application by the Government, the Honorable T. Emmett Clarie, Chief Judge of the United States District Court for the District of Connecticut, issued an order of immunity. Mr. Tate persisted in his refusal to testify and was found by Judge Clarie to be in contempt of court. Mr. Tate was thereupon sentenced to imprisonment for the life of the grand jury, a period of time (upon information and belief) approximately thirteen months in duration. Mr. Tate's contempt sentence from Judge Clarie was to be served prior to and not concurrent with the ten year sentence

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imposed by Judge Zampano on September 9, 1976.

(8) On January 20, 1976, a petit jury was selected and impaneled for the re-trial of the defendant, William Robinson. That retrial was scheduled to commence before Judge Zampano on January 27, 1976. The defendant requested and the Government agreed to supply notice at the earliest possible moment of David James Tate's decision to testify in this case should Mr. Tate arrive at such a decision.

(9) As the first item of business on the morning of January 27, 1976, the day the re-trial was scheduled to begin, Judge Zampano announced out of the presence of the jury that he had received a request as to whether he had received a motion for reduction in the sentence of David James Tate from Mr. Tate. Further, there had been a request as to whether Judge Zampano had ruled on Mr. Tate's motion. Judge Zampano indicated that he had received such a motion, that the motion had been filed some time in December, 1975, within the 120 day time period set forth in Rule 35 of the Federal Rules of Criminal Procedure, and that he had not as yet, ruled on that motion.

(10) At approximately 3:30 p.m. that same day, January 27, 1976, the Government informed the Court and counsel for defendant Robinson that James David Tate was the next Government witness. At approximately 4:00 p.m., Mr. Tate did take the stand and did testify for the Government and against the defendant Robinson. Mr. Tate testified that the agreement reached between himself and the Government included the Government's promise not to oppose Mr. Tate's outstanding motion to reduce his sentence then pending before Judge Zampano. This promise, among others, was made by the Government in exchange for Mr. Tate's testimony against Mr. Robinson.



(11) On January 28, 1976, the defendant filed a motion for a mistrial and a request that Judge Zampano withdraw as the presiding judge at the trial. The defendant requested further that this case be transferred to another United States District Court Judge for purposes of trial. The grounds for that motion were set forth generally in the body of that pleading. (See Attachment)

(12) On January 28, 1976, David Tate resumed the stand and, in response to cross-examination from defense counsel, testified that he did not agree to testify for the Government and against Mr. Robinson until after he learned that his motion to reduce was still pending before Judge Zampano and until after he had been promised by the Government that, in exchange for his testimony, the Government would not oppose that motion.

(13) The affiant is filing this Affidavit of Personal Prejudice pursuant to Title 28, United States Code, Section 144.

(14) This Affidavit is based on certain facts which were not known to the defendant and his counsel until after the commencement of this trial. More specifically, those facts are the following:

- (a) that David Tate would testify;
- (b) that David Tate had filed a motion to reduce sentence before Judge Zampano;
- (c) that, notwithstanding the fact that well over 120 days had passed since the date of Mr. Tate's sentencing, Judge Zampano had not ruled on that motion; and, finally,

- (d) that David Tate had conditioned his agreement with the Government to testify against Mr. Robinson on the assumption that his motion to reduce was still pending before Judge Zampano and, further, on the Government's promise that it would not oppose that motion.

For this reason, the affiant respectfully submits that this Affidavit was timely filed.

(15) It is this affiant's good faith belief that this Court's role in the procurement of testimony from David James Tate on behalf of the Government and against the defendant Robinson has effectively aligned this Court with the Government in this trial, and, in the eyes of the jury, has demonstrated personal prejudice on the part of the Court in favor of the Government and against the defendant. Specifically, this affiant believes (1) that the Court's comments at the time of Mr. Tate's sentence with respect to Mr. Tate's failure to co-operate with the Government, (2) that the Court's subsequent imposition of the maximum sentence allowed by statute, and (3) that the Court's failure to rule on Mr. Tate's motion for a reduction in sentence prior to the re-trial of the defendant Robinson -- the affiant believes that these actions, when viewed in the context of the Government's promises to Mr. Tate, effectively prevents this Court from discharging the function of a disinterested and impartial trial judge.

(16) This affiant believes further that by its participation in the procuring of Mr. Tate's testimony, the Court has assumed a role traditionally performed by the Government. The affiant submits that, in the eyes of the jury, the Court is irreparably aligned with the prosecution against the interest of this defendant.



(17) Finally, this affiant believes that the means used to obtain Mr. Tate's testimony against the defendant Robinson cannot and should not escape comment from defense counsel in final argument. The defendant is thus put to the choice either of treating the Court as a party adverse to the defendant in these proceedings and criticizing the carrot/stick methods employed to obtain Tate's

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\*/ The defendant intends to introduce Judge Zambano's comments at the time of Mr. Tate's sentencing -- as quoted in paragraph six of this Affidavit -- as evidence which goes to show David Tate's state of mind at the time he agreed to testify. The ten year maximum sentence and the pendency of Tate's motion to reduce are already in evidence.

testimony, or of inhibiting the defendant's final argument and causing him to refrain from making unfavorable comment on the Court's complicity in procuring what the defendant contends is perjured testimony. To be compelled to make this Hobson's choice cripples the defendant's ability to defend himself and deprives him of his right to a fair trial and due process of law.

(18) For all the reasons stated above, this affiant believes that this Court is personally prejudiced in this case.

Gregory B. Craig  
Assistant Federal Public Defender  
770 Chapel Street  
New Haven, Connecticut

Counsel for William Gene Robinson

Subscribed and sworn to before me this 29th day of January,

1976.

NOTARY PUBLIC

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UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA

v.

WILLIAM GENE ROBINSON

Criminal No. N-75-20

CERTIFICATE OF GOOD FAITH

In accordance with the requirements set forth in Title 28, United States Code, Section 144, I hereby certify that the attached Affidavit of Personal Prejudice as well as the Motion for a Mistrial which proceeded the Affidavit and which has been attached to the Affidavit have been written, sworn to and signed in good faith.

\_\_\_\_\_  
Gregory B. Craig  
Assistant Federal Public Defender  
770 Chapel Street  
New Haven, Connecticut

Counsel for William Gene Robinson

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ATTACHMENT

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA :  
V. : CRIMINAL NO. N-75-20  
WILLIAM E. ROBINSON :

DEFENDANT'S MOTION FOR A MISTRIAL

The defendant, William Robinson, respectfully moves this Court to enter an order declaring a mistrial in the above-captioned case. The defendant further moves this Court, pursuant to Rule 47 of the Federal Rules of Criminal Procedure, to withdraw as the trial judge in this case and to enter an order transferring this case to another United States District Court Judge for purposes of trial.

The reasons why this motion should be granted are the following:

(1) On September 9, 1975, this Court imposed a maximum sentence on David James Tate for the crime of bank-robbery. At the time of that disposition, the Court stated that one of the reasons he was imposing the maximum sentence was because Mr. Tate had refused to testify against those individuals who had participated in the bank robbery with Mr. Tate.

(2) On January 26 or January 27, 1976, before agreeing to testify against the defendant in the above-captioned case, David James Tate inquired whether this Court had ruled on his motion for a reduction of sentence. Upon learning that this Court had not yet ruled on that motion, Mr. Tate agreed to testify against the defendant in this case and before this court.

The defendant respectfully submits that the Court's comments at the time of Mr. Tate's sentencing, when viewed in light of Mr. Tate's subsequent request for a sentence reduction and when viewed in light of the Court's failure to act upon Mr. Tate's request within the 120 day time period prescribed by the Federal Rules of Criminal Procedure, and further, when viewed in light of Mr. Tate's subsequent decision to testify against this defendant, effectively removes this Court as an impartial tribunal which can, at least in the eyes of the jury, preside over the balance of this trial with detachment.

In effect, this Court has become a constructive party to the plea negotiations in this case. By imposing a maximum sentence, this Court imposed maximum pressure on David Tate to testify against this co-defendant. By this Court's failure to rule on Mr. Tate's motion for a reduction in sentence within the 120 day time period required by Rule 35 of the Federal Rules of Criminal Procedure, this Court increased the pressure on Mr. Tate to testify against this defendant, holding out the possibility to Mr. Tate that, as a result of his testimony, the Court would reduce Mr. Tate's sentence. This defendant respectfully submits that these facts will inevitably be disclosed to the jury in the course of this trial.



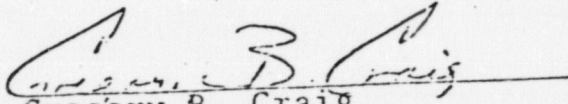
The defendant believes that this Court's role in the procurement of Mr. Tate's testimony against Mr. Robinson prevents this Court, at least in the eyes of the jury, from performing the function of a disinterested and impartial judge. The defendant further submits that, because of the Court's role in the procurement of testimony from Mr. Tate, the jury will give greater weight to Mr. Tate's testimony and will perceive the Court's conduct as being a comment on the credibility of Mr. Tate's testimony. Finally, the defendant respectfully submits that (1) this Court's comments at the Tate disposition, (2) this Court's failure to Rule on Mr. Tate's motion for a reduction in sentence in a timely fashion and (3) Mr. Tate's inquiry as to the status of that motion prior to his decision to testify cannot escape comment from defense counsel in final argument. Through no fault of its own, the Court in this case has taken on the function of holding out the carrot as well as administering the stick, a role traditionally performed by the Government. Unlike the Government, however, this Court is not an adverse party in these proceedings. Nonetheless, the Court, without design or intent, has assumed the role of a party adverse to the interests of this defendant. The defendant finds himself in an impossible situation and respectfully requests that this motion be granted.

THE DEFENDANT  
WILLIAM E. ROBINSON

BY Gregory B. Craig  
Gregory B. Craig  
Federal Public Defender  
770 Chapel Street  
New Haven, Connecticut

CERTIFICATION

I hereby certify that a copy of the above Motion has been delivered to the Office of the United States Attorney, Post Office Building, New Haven, Connecticut on this 28<sup>th</sup> day of January, 1976.

  
Gregory B. Craig

YPI-FS-2-3-75-5012-887

APP 120



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

-----X

THE UNITED STATES OF AMERICA

:

VS.

:

Criminal Action

:

No. N-75-20

DAVID JAMES TATE

-----X

Before the Hon. Robert C. Zampano  
United States District Judge  
New Haven, Connecticut  
September 9, 1975

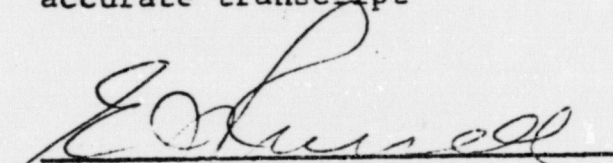
For The Government:

HAROLD J. PICKERSTEIN, Asst. U. S. Attorney  
Bridgeport, Connecticut

For The Defendant:

JOSEPH CHIARELLI, Esq.  
Hamden, Connecticut

This is to certify that the  
within 8 pages is a true and  
accurate transcript

  
Official Reporter

MR. PICKERSTLIN: The next matter, your Honor, for disposition is Criminal No. N-75-20, United States of America versus David James Tate. Mr. Tate is represented by Attorney Joseph Chiarelli. The Government has no comment.

THE COURT: I will hear whatever you have to say.

MR. CHIARELLI: Your Honor, Mr. Tate was 20 years old when this crime occurred. He resides with his family. The probation report covers the period of time very adequately up until his incarceration, but the report was prepared while he was in jail and it's very unusual or negative about facts about his personality and prospects for the future, I think because he was in jail at the time.

I was acquainted with Mr. Tate during these proceedings and I have become acquainted with Mr. Tate and members of the community who are here today.

Mr. Tate's not a hard person, he's not a criminal. When all of these events occurred he was heavily involved with drugs. If you will notice in the report, there's an indication that he's been heavily involved with heroin for the last five years. Mr. Tate is -- has been making an awful lot of progress since he was released from jail. He was incarcerated for a very long period of time, I believe it was a hundred and thirty-nine days, and then ultimately he was released on bond, and there have been no problems with him while he's been out on



1  
2 bond. He's been very active in a singing group. I received a  
3 folder from him today about three inches thick with music that  
4 he's written. He's very active in this group. They recently  
5 won a contest. His prospects for the future are very good.  
6 His manager is here today, Mr. Small, and other members of the  
7 community. He has been involved in community activities during  
8 this period of release. I believe that an extended period of  
9 incarceration is going to destroy this man. He is very young.  
10 He does have his career that he was looking forward to. The  
11 only result of incarceration is going to -- will be that it will  
12 make a criminal out of him. He has always lived with his family,  
13 all of his life, and they do depend on him, and I think that is  
14 a very significant factor in any incarceration that he might  
15 suffer. As I mentioned to your Honor before, Mr. Small is  
16 here, his manager, and he's asked me to request the Court to  
17 allow him to address the Court regarding Mr. Tate. Would that  
18 be possible, your Honor?

19 THE COURT: Well, I will give him a couple of minutes,  
20 but your belief that someone could possibly convince me to put  
21 him on probation is almost incredible in my mind.

22 MR. CHIARELLI: Your Honor, the report doesn't cover  
23 the progress that he's made since he's been released from jail.  
24 The report was --

25 THE COURT: Do you think that is the only factor a

1  
2 Court should consider? Do you know that if sentencing depended  
3 on how a defendant acted between his plea or a finding of guilt  
4 to the time of sentencing, we would not have one single defendant  
5 who would not have a halo around his head during that period of  
6 time knowing that the sentencing depended on that conduct. Here,  
7 we have a defendant -- I will give you all the time you want, but  
8 here we have a defendant who went into a bank with two other  
9 robbers, armed, has stolen from a federally insured bank, has not  
10 cooperated with the government at all. We still have two bank  
11 robbers out there, loose.

12 In addition, his criminal record goes back to breaking  
13 and entering with criminal intent, stolen goods, breaking and  
14 entering with criminal intent, robbery in the third degree,  
15 disorderly conduct, and resisting arrest.

16 MR. CHIARELLI: Your Honor, the reason for this pre-  
17 sentation is because the report does cover the period -- the  
18 report was prepared while Mr. Tate was in jail, and up till that  
19 point there is coverage. We're trying to make you aware of the  
20 facts. Your Honor, there is one more point. No one was injured.  
21 There was no physical assault on anyone.

22 THE COURT: Do you realize, Mr. Chiarelli, that the  
23 Government has already reduced the charge to a (b) count?

24 MR. CHIARELLI: Yes, your Honor.

25 THE COURT: That the acts clearly fulfill the (a)



count, exposing him to twenty years? If anyone was hurt and not fatally injured, he would be exposed to twenty-five years. So he already has the benefit of a (b) count.

But, is it Mr. Small that you wish me to hear?

MR. CHIARELLI: Yes, your Honor.

THE COURT: All right, Mr. Small, what would you like to say?

MR. CHIARELLI: Would you come up here?

MR. SMALL: Your Honor, I worked in a recreation the past six years, and the significant thing here is that I have been having auditions for groups. I happen to have wrote a movie, and the movie's coming out, it will be shot next spring, and I have been trying to find talent for the movie. We had a contest to use the local people in the community because the picture's about the community. Mr. Tate did something that shocked me. In front of four hundred people he made a statement that he had just come out of jail recently and that if -- well, the whole thing -- he came out of jail recently and he had committed a crime and told the young kids out there in the audience if they had anything on their minds like that, they were to talk to him. Which surprised me, 'cause I basically know about it and I would have told 'em afterwards, and I told it to him, and it just so happened that his group, two or three of them happened to win the contest. They're good. Very good. So we had a

1  
2 conversation about it, and I asked him what he had done, and  
3 he told me, and he said it really took the heart out of him.  
4 Sitting in a jail is one thing, and it really took the heart  
5 out of him.

6 THE COURT: Thank you, Mr. Small.

7 MR. SMALL: Thank you.

8 THE COURT: You may continue, Mr. Chiarelli.

9 MR. CHIARELLI: Your Honor, the only remainig point  
10 that I would like to stress is that the possession of weapons  
11 during this crime is very serious, but I want to remind your  
12 Honor that no one was act lly physically assaulted during the  
13 course of this event.

14 THE COURT: Anything further?

15 MR. CHIARELLI: No, your Honor.

16 THE COURT: Mr. Tate, would you like to say anything  
17 in your own behalf?

18 THE DEFENDANT: Yes, sir. I know what I did was  
19 wrong and I'm very sorry, and I want to do right. Now. I want  
20 to be someone some day, if possible. I want -- I'm working  
21 with children on Sundays. You know. I'm teaching them how  
22 to sing and how to dance. I'm working with my father part-  
23 time, when he takes a day off from work -- he works every day,  
24 when he takes a day off, me and him, we plaster. You know.  
25 The people in the community and society are -- see potential



1  
2 with me. And I'm thinking very positive. I would never do  
3 nothing like that again in my life. I want -- I have wrote  
4 seven or eight songs. I have talked to producers, writer,  
5 and they say this is good material, and "we can use this and  
6 we can use you." And I want to become somebody, your Honor.  
7 I don't want to be in -- be no criminal. I don't want to be  
8 that. I know when I was young and I was wild, you know, and  
9 I just -- you know, doing wrong things, you know, but if you  
10 would give me a chance to prove myself to you and to show you  
11 that I will be a respectful citizen and I will work hard at  
12 what I'm trying to do and I will produce instead of destroying.  
13 I will be -- I'm very constructive and I would like -- I would  
14 like to show you that I can do right. I can do right.

15 THE COURT: Well, there are a lot other factors the  
16 Court must consider than repentance and a desire to do right.  
17 I have to consider the fact that three men went into a bank  
18 with shotguns and -- in fact, one cocked a revolver and pointed  
19 it at one of the tellers. I am not saying you did, I am saying  
20 this is the atmosphere -- that money was taken in a holdup;  
21 that this was done, at least with respect to you, with a long  
22 prior record; at least, a serious record. In addition, there  
23 has been no co-operation by you whatever. You may have your  
24 own solid reasons for it, and I am not taking that into account  
25 in the sentencing, but you certainly have not demonstrated to

me that you are now rehabilitated. You want to be a great citizen of this country, and yet two bank robbers are out there going scot-free because you refuse to co-operate. I think tremendous leniency has been shown to you when the government reduced the charges to limit me to ten years.† I cannot think of a sentence in this court in the last twelve years that I have been on the bench, that an armed robber in a bank, where there weren't mitigating circumstances, got less than fifteen years. In fact, the going rate for armed robbery in the federal court is around eighteen to twenty years, with sawed-off shotguns, with prior records.

So, for the protection of society and as a deterrent to others, it is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for a period of imprisonment of ten years.

-ooOoo-



1  
2 G E O R G E M A H E R , called as a witness by the  
3 Defendant, having been first duly sworn by the Notary  
4 Public, was examined and testified as follows:

5 THE CLERK: State your name and address,  
6 please.

7 THE WITNESS: George Maher. My home  
8 address? 111 Fairview Avenue, in West Haven.

9 DIRECT EXAMINATION

10 BY MR. CRAIG:

11 Q Is that pronounced Maher?

12 A Maher.

13 Q Maher?

14 A Right.

15 Q Mr. Maher, how are you employed?

16 A As a correctional officer for the State of  
17 Connecticut.

18 Q Where are you located?

19 A Bridgeport Correctional Center.

20 Q That is a jail in Bridgeport, Connecticut?

21 A It's a state jail.

22 Q State institution?

23 A Right, right.

24 Q Were you employed there on February 19, 1975?

25 A Yes, I was.

Q On that date did you have occasion to speak with  
FBI officers?

A Yes, I did.

Q Did they make a request of you?

A Yes. The request came through the front office  
down to my office.

Q And you called and spoke with them?

A Right.

Q And you had a conversation with them at that  
point?

A Right.

Q Did they at that time show you some photographs?

A Showed me a photograph.

Q They showed you one photograph?

A Right.

Q Do you recall what that photograph looked like?  
Showing you Government's Exhibit 5, could you  
tell me if that was the photograph that they showed you?

A I'm not sure.

Q You are not sure?

A No, not really.

Q Is it similar?

A It's similar to the one they showed me. I was  
under the impression that there was more people in the



background.

Q I am sorry?

A I was under the impression that there was another person in the background, the picture that I saw.

Q So it was a different picture?

A Right.

Q Did they make a request of you at that time?

A Yes. He asked -- I was asked if I -- you know, could I identify this person in the picture.

Q Could you identify that person?

A No, not right off -- offhand, I told them that he looked vaguely familiar.

Q What did you do at that point?

A Well, the picture was left with me.

Q Yes?

A And to be picked up the next day. I, in turn, took the picture back down to my office where we have all the records and I passed the picture around to the other officers that were working there that day. They felt that they, in turn, knew him, too, but they just couldn't put a name onto it, and they felt that he had been there recently.

So at this point they went back into the files, two months back into the files, because they felt this was the time period that he was there, and they pulled maybe

eight or nine pictures and they were left on my desk, and then we went over 'em again.

Q Is this with your staff that you went over them again?

A Right.

Q Did you come to any conclusions?

A Yes, we did.

Q Did you come to a conclusion as to the person that you thought was in that photograph?

A That resembled him.

Q What was that conclusion?

MR. PICKERSTEIN: Objection, your Honor.

THE COURT: How can this witness testify as to what his opinion is as to what the photograph might show? We do not have the photograph in evidence, and, in any event, even if the photograph were in evidence, it is the province of the Jury to determine the similarities, if any, of the person in the photograph and this defendant. Lastly, this witness is not an expert on any particular characteristic in the photograph. It is something all laymen can do, look at a photograph and decide whether they know the person or not.



1  
2 MR. CRAIG: Your Honor, I would use as the  
3 basis for the admissibility of this testimony the  
4 Rule 704 in the Federal Rules of Evidence.  
5 That I think relates specifically and particularly  
6 with reference to legislative history as to the  
7 opinion of lay witnesses even as to the ultimate  
8 issue.

9 THE COURT: Couldn't the Government put on  
10 a bunch of witnesses and say "In my opinion that  
11 is or is not the defendant," and then you would  
12 come back with a series of witnesses saying the  
13 opposite, and then the Government comes back with  
14 a series of witnesses to contradict or to  
15 reinforce the testimony?

16 MR. CRAIG: I think the burden here is  
17 different, because the burden of proof is on the  
18 Government to prove guilt beyond a reasonable  
19 doubt. It seems to me, if there is exculpatory  
20 testimony and the witness is going to testify that  
21 to him that individual looks like someone else  
22 and someone else committed the robbery, that is  
23 exculpatory testimony that the defendant may be  
24 entitled to.

25 THE COURT: But that is not his testimony.

MR. CRAIG: He has not testified to it yet.

THE COURT: We do not even have the photograph in evidence that he said he looked-at. He said he looked at a photograph with two people in it. I do not know which one he is going to point to, if there are two persons in a photograph.

MR. CRAIG: I think his memory is --

THE COURT: How do we know which of the two he is referring to, the one that allegedly looks like this defendant or some other person in the bank?

BY MR. CRAIG:

Q I would like you, if you would, Mr. Maher, to look through these photographs and see if there is any photograph that you think is similar, and then inform us which individual the FBI was asking about that day in the photograph.

A There you go.

Q Which individual?

A Right here, the only shot I had.

Q This was the only picture you had of this individual?

A That's right. This is the shot I had. I had one picture, though, not two.



Q Were you asked to try to identify that individual?

A Right.

Q Referring to the individual in the middle --

A Height, weight, size.

Q -- of Government's Exhibit No. 7, the picture at the top of the exhibit.

THE COURT: May I see that?

The objection is sustained.

MR. CRAIG: Thank you, Mr. Maher.

THE COURT: To complete the record, the exhibit the witness referred to is Exhibit 7, which contains two photographs, and the one the witness pointed to is the one at the top, which shows the back and side view of a person.

The objection is sustained.

You are excused -- I am sorry --

MR. PICKERSTEIN: I have no questions, your Honor.

THE COURT: You are excused.

(Witness excused)

MR. CRAIG: I will call Agent Moretti.

P R O C E E D I N G S

THE COURT: Good morning.

MR. CRAIG: Good morning, your Honor.

I would request, if I might, your Honor, an opportunity very briefly at this time, outside the presence of the jury, to make an offer of proof with respect to what George Maher would have testified to if he had had the opportunity. I failed to make that full offer of proof yesterday because we were discussing in front of the jury, and I thought for purposes of the record, if I could have the opportunity now, I would appreciate it.

THE COURT: It certainly puts me at a disadvantage when you make an offer of proof the day after. Maybe there was something you would have said yesterday that would have indicated to me that he should have testified as you wished him to. Moreover, the argument was before the jury only because you so argued it before the jury, and heretofore, whenever you wanted to make a point outside the presence of the jury, you asked for a side bar conference, and I have always granted that.



1  
2 But, in any event, what would he have  
3 testified to?

4 MR. CRAIG: Your Honor, the only question  
5 that I was going to ask him that would have been  
6 in evidence had he been allowed to answer was the  
7 identity of an individual that he and the staff  
8 of the correctional institution thought was in  
9 the photograph supplied by the FBI, and that  
10 individual was a man by the name of Eli Henderson.

11 Over and above that testimony, however --

12 MR. PICKERSTEIN: Excuse me. I think it  
13 was Eli Turner.

14 MR. CRAIG: I am sorry. I beg your  
15 pardon. Eli Turner. His middle name is Eli  
16 Henderson Turner.

17 But over and above that testimony, had I  
18 been able to elicit that from him, Mr. Pickerstein  
19 and I agreed to what Captain Fabrizi of the  
20 Bridgeport Police Department would have testified  
21 to had he been here, and I would like to offer  
22 that stipulation just for the purposes of the  
23 record, which Mr. Pickerstein has seen.

24 THE COURT: But the stipulation did not  
25 preclude the Government from objecting --

MR. CRAIG: That is correct, your Honor.

THE COURT: -- to have the evidence coming in?

MR. CRAIG: That is absolutely correct.

THE COURT: What would Captain Fabrizi say?

MR. CRAIG: I will hand you a copy of the stipulation so you can see for yourself, your Honor, and I will just read it into the record.

It would have been stipulated by the Government, had the evidentiary issue gone -- the ruling been in favor of the defense, that if Captain Anthony Fabrizi of the Bridgeport Police Department were called, he would testify that on February 12, 1975 and on February 13, 1975, local armed robberies occurred; that Eli Henderson Turner was suspected by the Bridgeport police of being responsible for these two armed robberies; that on February 18, 1975, the date of the bank robbery in Shelton, the Bridgeport police were in the process of obtaining arrest warrants for Eli Turner; that on February 18, 1975, the Bridgeport police were looking for and had not yet apprehended Mr. Turner; and that Eli Turner is six feet one inch in height, 190



1  
2 pounds in weight, and 35 years of age.

3 THE COURT: This type of testimony differs  
4 from the Maher testimony. What are the  
5 Government's objections to Captain Fabrizi's  
6 testimony?

7 MR. PICKERSTEIN: We object on the grounds  
8 of relevance, your Honor.

9 I think Mr. Craig's offer of proof would  
10 have been that Mr. Maher would have said "The  
11 individual I recognized in the photograph is one  
12 Eli Turner," and Captain Fabrizi's stipulated  
13 testimony to the effect that the Bridgeport  
14 police were looking for Mr. Turner we claim has  
15 no relevance at all to this bank robbery.

16 First of all, with respect to the Maher  
17 testimony, it is not a relevance problem; it is a  
18 question of competence, whether he is competent  
19 to identify anyone in that photograph to the  
20 exclusion of the jury. And, second of all, I do  
21 not see what relevance this claim has with the  
22 fact that Eli Turner was being sought by the  
23 Bridgeport Police Department; certainly no  
24 connection between him and the bank robbery.

25 THE COURT: I am not sure I put the cases

on record that I believe support my ruling with respect to the Maher testimony. I think I cited a recent --

MR. CRAIG: 8th Circuit case.

THE COURT: -- 7th Circuit case yesterday, and I believe there is the Brown case that is set forth in the 8th Circuit case, and there are many other cases which indicate that maybe even an expert could not testify unless there are unusual or peculiar characteristics which the jury needs expert opinion on.

But may I ask you this, Mr. Craig: Assuming that there was no objection to the Maher testimony --

MR. CRAIG: Yes, sir.

THE COURT: -- and assuming that Mr. Pickerstein lined up fourteen witnesses in rebuttal, to state that in their opinion the photograph did depict the defendant, what would you do?

MR. CRAIG: I would object to the introduction of that testimony, your Honor.

THE COURT: On what ground?

Mr. Pickerstein would say "The defendant



1  
2 put on several witnesses that said the photograph  
3 does not resemble or does not portray the  
4 defendant. I am putting on witnesses that say  
5 the contrary." Where will we go with that type  
6 of procedure?

7 MR. CRAIG: Your Honor, I think perhaps the  
8 relevance of my claim with respect to Mr. Maher  
9 and Captain Fabrizi is essentially this: that  
10 in the early stages of the investigation, the  
11 basis for the FBI's belief that Mr. Robinson was  
12 a suspect and was a bank robber in the Shelton  
13 bank was an identification based from a  
14 photograph. On that basis they took the  
15 photographs out to Mondulick and Welch for  
16 identification.

17 THE COURT: Isn't there a little bit more?  
18 Tate identified Robinson way back in March; did he  
19 not?

20 MR. CRAIG: April 8th, I believe, your  
21 Honor.

22 THE COURT: April 8th.

23 MR. CRAIG: This all took place in the  
24 month of March, I believe.

25 THE COURT: All right. Let me ask you

1  
2 this question, then:

3           Would you allow Mr. Pickerstein to put on  
4 eight FBI agents that would say that following  
5 the robbery they had reason to believe that Mr.  
6 Robinson was the perpetrator? When you objected,  
7 he would say, "Well, the defense put on Captain  
8 Fabrizi to say they suspected someone else."

9           I suppose that when there is a bank robbery,  
10 from my knowledge and experience, immediately many  
11 things happen. I know in one case that I had I  
12 learned that upon each and every bank robbery  
13 that occurs in the State of Connecticut an FBI  
14 message goes out asking all of their agents to  
15 look out for certain license numbers, and, if I  
16 recall, one contained the license number of Aeden  
17 McCarthy and another was McNellis and a few known  
18 so-called bank robbers, and it was as a result of  
19 that in one case that they started following, I  
20 believe, Mr. McNellis, who was coming down the  
21 highway shortly after a bank robbery.

22           I suppose at that point, if we called the  
23 FBI agents into court and it was stated by tellers  
24 that the individuals were white, tall, were  
25 masked and had guns and a few other details in

Apr 14 2



1  
2 the modus operandi, immediately they would say "We  
3 suspect A, B, C and D, and if I allow all that  
4 testimony in we would be here for days just  
5 probing the minds of FBI agents. Another agent  
6 may get on and say, "No, I think A is through  
7 bank-robbing, and I think it's X."

8 So the rulings remain with respect to Maher,  
9 and with respect to Captain Fabrizi the objections  
10 are sustained.

11 MR. CRAIG: Could I make just one  
12 additional comment, your Honor, in response to  
13 that?

14 THE COURT: Yes.

15 MR. CRAIG: I do think the distinguishing  
16 characteristic about Mr. Turner and the relevance  
17 of Mr. Turner to this case is not only that  
18 correctional officers who are agents of the state  
19 identified him in the photograph but they had a  
20 record of prior armed robberies and was suspected  
21 for prior armed robberies. That may loom as a  
22 distinguishing characteristic -- as remarkable as  
23 the hat, for that matter.

24 THE COURT: What are you trying to prove,  
25 Mr. Craig, that it was not the defendant in the

2 bank or that the police had other suspects?  
3 Maybe Turner was a suspect. . Maybe Mr. Smith  
4 will get on, "Yes, when I first heard about the  
5 robbery, heard about the description of the  
6 perpetrator, I thought of Robinson, I thought of  
7 Turner, I thought of X, Y, Z, I thought of Mr.  
8 Jones, I thought of Mr. Smith." Why should we  
9 pursue all his mental processes?

10 Moreover, you have the power to subpoena.  
11 Bring Mr. Turner in, show his characteristics as  
12 against this defendant. That is your privilege,  
13 I would think. Or to bring anyone else in.  
14 There are nine photographs in evidence already.  
15 But, as far as putting Captain Fabrizi on to say  
16 when he heard about the bank robbery he thought  
17 of Mr. Turner --

18 MR. CRAIG: He saw the picture.

19 THE COURT: -- or even the picture -- would  
20 open the door to the Government bringing in  
21 contrary evidence on rebuttal, and I am sure you  
22 do not want that.

23 So, under all the circumstances, the rulings  
24 are sustained. Your offer of proof is preserved  
25 for another forum if that becomes necessary.



KENNETH S. WILSON, called as a witness  
by the Defendant, having been first duly sworn by the  
Clerk of the Court, was examined and testified as  
follows:

THE CLERK: Please state your name and  
address for the record.

THE WITNESS: Kenneth Sylvester Wilson, 254  
Carol Avenue, Bridgeport.

DIRECT EXAMINATION

BY MR. CRAIG:

Q Mr. Wilson, are you acquainted with the defendant  
in this case, William Robinson?

A Yes, I am.

Q How long have you known Mr. Robinson?

A Since '67.

Q Since 1967.

A Right.

Q That is eight to nine years; is that correct?

A Right.

Q Showing you Government's Exhibit 5, have you ever  
seen this photograph before?

A Yes.

Q Can you tell the ladies and gentlemen of the jury  
when was the last time you saw that photograph?

1  
2 A When in September was the court --

3 Q Do you remember the event at which you saw this  
4 photograph?

5 A Right.

6 Q When was that?

7 A At the trial.

8 Q That was the trial that occurred in June; is  
9 that right?

10 A Right.

11 Q Have you seen it since then?

12 A No.

13 Q In that picture there is an individual wearing a  
14 hat; isn't that correct?

15 A Yes.

16 Q Have you ever seen a hat like that on Mr. Robin-  
17 son?

18 A No.

19 Q To your knowledge, does he wear that kind of hat?

20 A No.

21 Q Prior to seeing that picture in the trial, did  
22 you have occasion to see it before the trial in June?

23 A I seen a picture in the paper.

24 Q Did you see that picture in the paper, in the  
25 newspapers?



1  
2 A I don't know it was the same picture, but I seen  
3 the picture of the -- in The Bridgeport Post.

4 Q Is this the picture that you saw in The Bridgeport  
5 Post? Referring to -- this is Government's Exhibit 9 for  
6 identification, it hasn't been entered.

7 MR. CRAIG: I would offer it --

8 Q Is this the picture you saw?

9 A Yes.

10 MR. CRAIG: I would offer it, your Honor.

11 THE COURT: Any objection?

12 MR. PICKERSTEIN: No objection, your Honor.

13 THE COURT: Full Exhibit 9.

14 (Government's Exhibit 9 in evidence)

15 BY MR. CRAIG:

16 Q You know that in this case the Government has  
17 accused Mr. Robinson of being the bank robber in that picture;  
18 is that right?

19 A Right.

20 Q Is there anything in that picture, such as the  
21 hat, that would make you think that it is Mr. Robinson?

22 MR. PICKERSTEIN: Objection, your Honor.

23 THE COURT: Yes. Just one moment.

24 How do you distinguish the claim with  
25 respect to Mr. Wilson from that of Mr. Maher

1  
2 with respect to looking at a photograph and  
3 giving an opinion as to whether or not the  
4 defendant is the person portrayed in that photo-  
5 graph? Again, it would seem to me the  
6 Government then could put on a series of witnesses  
7 that could or would say -- I am not sure -- but  
8 should be permitted to say -- that he is the man.  
9 Then you could come back in rebuttal, and this  
10 can continue on and on. That is one point I  
11 would like to make.

12 Second, it is for the jury to determine  
13 these questions, and, if there were some  
14 characteristic that needed an expert's opinion  
15 and the jury needed an aid in making its determi-  
16 nation on identification with respect to the  
17 photograph, I would allow it. And I allowed the  
18 testimony about the hat.

19 MR. CRAIG: That is correct, your Honor.

20 THE COURT: All right.

21 There is a recent 2nd Circuit case very  
22 close to this point which I believe supports the  
23 Court's ruling, and I will give it to you in a  
24 minute.

25 I have found the case. It is not a 2nd



1  
2 Circuit case. It is an 8th Circuit case,  
3 United States versus Green, 525 Federal 2nd, 386,  
4 at 391, 8th Circuit, 1965, in which the Court-  
5 sustains this Court's opinion in ruling that the  
6 everyday experience of twelve laymen on the jury  
7 over their combined lifetimes permits them to  
8 make photographic comparisons of persons.

9 As I said, if there was something unusual,  
10 some specific characteristic, some peculiarity  
11 that may need expert opinion, I would allow it,  
12 but I see none under these circumstances, and  
13 therefore the objection is sustained.

14 BY MR. CRAIG:

15 Q One last question, Mr. Wilson:

16 Do you know whether Willie Robinson is right- or  
17 left-handed?

18 A Left-handed.

19 MR. CRAIG: No further questions.

20 CROSS-EXAMINATION

21 BY MR. PICKERSTEIN:

22 Q Mr. Wilson, you testified you have known Willie  
23 Robinson since 1967; is that right?

24 A Right.

25 Q You say he is a friend of yours?

1  
2 A Yes.

3 Q See him frequently?

4 A Yes.

5 Q How frequently?

6 A I don't know, maybe twice a week.

7 Q Two or three times a week?

8 A Right.

9 Q Every week?

10 A No, if he's driving trucks.

11 Q You consider him a good friend; don't you?

12 A Yes.

13 Q You know he is charged with bank robbery in this  
14 case; don't you?

15 A Yes.

16 Q You do not want to see him convicted for that bank  
17 robbery; do you?

18 A If he's --

19 Q Repeat the question. Yes or no?

20 A No.

21 MR. CRAIG: Nothing further, your Honor.

22 THE COURT: Mr. Craig, anything further?

23 MR. CRAIG: I have nothing further.

24 THE COURT: You are excused, Mr. Wilson.

25 (Witness excused)



United States Department of Justice

UNITED STATES ATTORNEY  
DISTRICT OF CONNECTICUT  
915 LAFAYETTE BOULEVARD  
BRIDGEPORT, CONNECTICUT 06603

RECEIVED

JAN 8 1976

January 7, 1976

U.S. DISTRICT COURT  
NEW HAVEN, CT

Gregory Craig, Esquire  
Federal Public Defender  
770 Chapel Street  
New Haven CT 06510

Re: United States v. Robinson  
Criminal No. N-75-20

Dear Mr. Craig:

Pursuant to Rule 12.1 of the Federal Rules of Criminal Procedure, the Government hereby makes demand upon you for written notice of your intention, if any, to offer a defense of alibi in the above-captioned case. The Government claims that the bank robbery that is the subject of the above-captioned case occurred on February 18, 1975 at Shelton, Connecticut.

Sincerely,

PETER C. DORSEY  
UNITED STATES ATTORNEY

  
BY: HAROLD JAMES PICKERSTEIN  
CHIEF ASSISTANT UNITED STATES ATTORNEY

HJP/sj

cc: Clerk of the Court  
United States District Court  
Post Office Building  
New Haven, Connecticut 06510

APP 151

January 8, 1976

Harold James Pickerstein, Esq.  
Chief Assistant United States Attorney  
Federal Building  
915 Lafayette Boulevard  
Bridgeport, Connecticut

Re: United States v. Robinson  
Criminal No. N-75-20

Dear Mr. Pickerstein:

In response to your letter of January 7, 1976 and in accordance with my obligation under Rule 12.1 of the Federal Rules of Criminal Procedure, I am writing to inform you of my intention to offer an alibi defense in the above-captioned case.

The following witness will be called as part of that defense:

Mr. Joseph Burroughs  
329 Stratford Avenue  
Bridgeport, Connecticut

It is my understanding that the Government has known the identity and address of this individual as well as the precise content of his testimony since June 12, 1975, the date Mr. Burroughs testified in Mr. Robinson's first trial.

Very truly yours,

---

Gregory B. Craig  
Federal Public Defender

GBC/njk

cc Chris. Rice

APP 152



Robinson file

United States Department of Justice

UNITED STATES ATTORNEY  
DISTRICT OF CONNECTICUT  
915 LAFAYETTE BOULEVARD  
P. O. Box 394  
BRIDGEPORT, CONNECTICUT 06601

January 12, 1976

RECEIVED

U.S. DISTRICT COURT  
BRIDGEPORT, CT

Gregory Craig, Esq.  
Federal Public Defender  
770 Chapel Street  
New Haven, Connecticut 06510

Re: United States v. William Robinson  
Criminal No. N-75-20

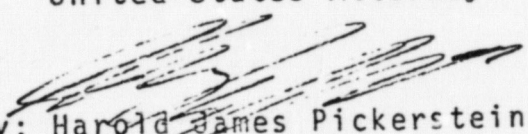
Dear Mr. Craig:

We are in receipt of your letter dated January 9, 1976, wherein you set forth the name and address of the alibi witness upon whom you intend to rely in the defense of the above-captioned case.

In accordance with Rule 12.1(b), F.R.Crim.P., please be advised that the government intends to rely upon Retta Mondulick, 123-1/2 Hill Street, Shelton, Connecticut, and Robert Welch, 12 Murray Drive, Seymour, Connecticut, to establish Robinson's presence at the scene of the bank robbery. Additionally, the government intends to rely upon John Pescatelli, Assistant Director, Employment Security Division, Connecticut State Labor Department, 200 Folly Brook Road, Wethersfield, Connecticut, to rebut the testimony of the defendant's alibi witness.

Sincerely,

Peter C. Dorsey  
United States Attorney

  
By: Harold James Pickerstein  
Chief Assistant United States Attorney

HJP:srk

Cy: Clerk's Office, U.S. District Court, 141 Church Street,  
New Haven, Connecticut



APP 153

MEMORANDUM TO THE INVESTIGATION FILE

# 4

TO: Gregory B. Craig

RE: United States v. Robinson

FROM: Robert Eaton Porter

DATE: 22 JAN 76

-----  
TELECON:  
21 JAN 76  
1545-1557 hrs.

Wm. Kegler  
Connecticut State Labor Dept.  
Employment Security Division  
200 Folly Brook Rd.  
Wethersfield, CT.  
FTS 641-5104

AUSA Pickerstein has indicated that he will rely on testimony provided by John Pescatello of the above department to refute the testimony of Joseph Burrough's our client's alibi witness.

After speaking briefly with John Pescatello I was referred to William Kegler who was doing the research into Burroughs' file.

According to Mr. Kegler, Burroughs regular claims ran from August 1974 until February 10, 1975. Extended claims were initiated and approved. Ledgers were made but there are no records of payments. Although there are no records of payments this doesn't mean that no payments were made. There are two extended periods identified as EB and EC. The EC extension would not have been initiated until EB payments had been exhausted.

Mr. Kegler indicated that the records maintained in their central files are confused and there doesn't seem to be anything definite. Mr. Kegler sent an assistant to the local unemployment office but it was found that the local office had even less information in their files.

*Robert Eaton Porter*  
ROBERT EATON PORTER  
Investigator

REP/njk  
1/26/76

APP 154



WALTER FRANCIS GLENNEN, called as  
a witness by the Government, having been first duly sworn  
by the Clerk of the Court, was examined and testified  
as follows:

THE CLERK: Please state your name and  
address for the record.

THE WITNESS: Walter Francis Glennen,  
G-l-e-n-n-e-n, 174 Maple Street, New Britain,  
Connecticut.

DIRECT EXAMINATION

BY MR. PICKERSTEIN:

Q Mr. Glennen, are you employed?

A I am.

Q By whom are you employed?

A I'm employed by the State Labor Department. I'm  
manager of the Unemployment Compensation Office, 770 Chapel  
Street, in New Haven.

Q At my request, Mr. Glennen, did you receive a  
request to search for certain records of the State Labor  
Department?

A I did.

Q Whose records were those?

A The records of a Joseph Burroughs.

Q Did you find any such records, sir?

1  
2 A I did.

3 Q Have you those records with you today?

4 A I do have a copy of the records.

5 Q These are Xerox copies, I take it, of the original  
6 records?

7 A Xerox copies of the original records.

8 Q May I have them, sir?

9 Are these records kept in the ordinary course of  
10 business by the Labor Department?

11 A Yes, they are.

12 Q It is the ordinary course of the business of the  
13 Labor Department to keep such records?

14 A It is.

15 Q I show you Government's Exhibit 17 for  
16 identification and ask if you will tell us what that document  
17 is, sir.

18 A This is a copy of the claim record card on which  
19 all transactions for payment are listed for Joseph Burroughs.

20 Q Can you tell us what a claim record card is, sir?

21 A A claim record card is a document that has certain  
22 weeks listed, imprinted on the document, depending on when a  
23 person might file for unemployment.

24 Q I show you Government's Exhibit No. 18 for  
25 identification and ask you what that document is.



1  
2 A This is a document that is kept in our central  
3 office in Wethersfield that lists all payments made to any --  
4 in this case to a Joseph Burroughs.

5 MR. PICKERSTEIN: I offer these, your Honor.

6 MR. CRAIG: Can I have a voir dire on those  
7 documents, your Honor?

8 THE COURT: Certainly.

9 MR. CRAIG: There are some pencil markings  
10 on Government's Exhibit 18. Did you put those in  
11 there? \*

12 THE WITNESS: No, I did not.

13 MR. CRAIG: Do you know who put those in?

14 THE WITNESS: No, I don't.

15 MR. CRAIG: This is a Xerox copy; is it  
16 not?

17 THE WITNESS: That's right. \*

18 MR. CRAIG: Did you make this copy?

19 THE WITNESS: No, I didn't.

20 MR. CRAIG: Did you conduct a file search  
21 which produced this document? \*

22 THE WITNESS: I did not.

23 MR. CRAIG: That is referring to Government's  
24 Exhibit 18.

25 This document is located where?

1  
2 THE WITNESS: On Folly Brook Boulevard in  
3 Wethersfield, Connecticut, in the Labor Department  
4 Building.

5 MR. CRAIG: Is this the complete file of  
6 Mr. Burroughs?

7 THE WITNESS: I couldn't state whether it's  
8 the complete file or not. It was the only thing  
9 presented to me as his records for unemployment. \*

10 MR. CRAIG: Was his complete file  
11 requested from Wethersfield?

12 THE WITNESS: Well, the complete was  
13 listed -- what -- subpoenaed, his records from  
14 January '75 to August '75.

15 MR. CRAIG: Are these the complete records  
16 from January?

17 THE WITNESS: That would be complete from  
18 January 1st through August.

19 MR. CRAIG: Did you personally conduct that  
20 search?

21 THE WITNESS: No, I did not, I stated.

22 MR. CRAIG: So you personally cannot  
23 testify that this is the complete file of Mr.  
24 Burroughs' file in that office; can you?

25 THE WITNESS: No.



1  
2 MR. CRAIG: With respect to Government's  
3 Exhibit 17, what did you say this was?

4 THE WITNESS: It's a copy of what we refer  
5 to as a claim record card. It is kept in the  
6 local office where a person would file for  
7 unemployment.

8 MR. CRAIG: So I take it that this card  
9 was taken out of the office in Bridgeport? \*

10 THE WITNESS: The Bridgeport office.

11 MR. CRAIG: Do you know the process by  
12 which this is filled out?

13 THE WITNESS: I know the process in which  
14 it normally is filled out by any office in the  
15 State of Connecticut, yes.

16 MR. CRAIG: Is this filled out by the  
17 applicant for the compensation?

18 THE WITNESS: No, it's filled out by the  
19 claims examiner at the time the person applies  
20 for benefits, each time he applies.

21 MR. CRAIG: Are there other documents of  
22 the individual that goes to collect compensation  
23 filled out?

24 MR. PICKERSTEIN: Objection, your Honor.  
25 I do not see how that goes to the admissibility

1  
2 of these documents.

3 MR. CRAIG: Has to do with the completeness  
4 of the file, your Honor.

5 THE COURT: He did not ask for the file.  
6 He only asked for certain records --

7 MR. CRAIG: Could I see the subpoena?

8 THE COURT: -- and he said he brought them.

9 MR. CRAIG: Are there other documents that  
10 an individual would be filling out when he went to  
11 claim his unemployment compensation?

12 MR. PICKERSTEIN: Objection, your Honor.  
13 That does not go --

14 THE COURT: Objection is overruled.

15 THE WITNESS: There are other documents,  
16 yes. He presents a claim at the time that he  
17 is filing, signs it, and that's presented when  
18 payment is made in the local office.

19 MR. CRAIG: That would be kept on file in  
20 the local office as well?

21 THE WITNESS: No, that goes to the central  
22 office in Wethersfield after payment is made, the  
23 claim and the voucher of the check.

24 MR. CRAIG: And that claim would be signed  
25 by the individual?



1  
2 THE WITNESS: That's right.

3 MR. CRAIG: In addition to which do you  
4 keep records of the checks that are paid out?

5 THE WITNESS: Well, the record of the  
6 check is sent, as I said, to Wethersfield after  
7 payment is made, and that's the record that is  
8 kept. It's kept in a central office, not in the  
9 local office.

10 MR. CRAIG: I am sorry, there may be two  
11 documents we are talking about.

12 If I were collecting unemployment compensa-  
13 tion, I would come into your office to pick up my  
14 check; is that right?

15 THE WITNESS: Right.

16 MR. CRAIG: And I would sign something for  
17 the check; would I not?

18 THE WITNESS: You would bring something in  
19 with you, present it to your -- prior to your  
20 appointment, what we refer to as a claim -- I  
21 don't have any copies -- and that is transported  
22 to Wethersfield along with the voucher of the  
23 check if payment is made at the time.

24 MR. CRAIG: And I would sign that claim?

25 THE WITNESS: You'd sign the claim.

1  
2 MR. CRAIG: And give it to you?

3 THE WITNESS: That's right.

4 MR. CRAIG: And I would get the check back?

5 THE WITNESS: Yes.

6 MR. CRAIG: You would give me the check?

7 THE WITNESS: Right.

8 MR. CRAIG: And at some subsequent date I  
9 would sign the check; is that right?

10 THE WITNESS: When cashing it, right.

11 MR. CRAIG: And present it to a bank?

12 THE WITNESS: Right.

13 MR. CRAIG: Then you would keep a record of  
14 that check when it returned?

15 THE WITNESS: When it was cancelled, right;  
16 it would be compared to the voucher of the check  
17 that was kept in the office when the check was  
18 presented to you.

19 MR. CRAIG: Over and above the check and the  
20 claim which I as a compensation claimant would  
21 sign, are there any other documents that would  
22 exist?

23 THE WITNESS: Everyone is required to  
24 register for work, and they would have an  
25 identification card that you would bring with you,



1  
2 with your appointment date and time on it.

3 MR. CRAIG: No, I am talking more particu-  
4 larly about the kinds of documents that you would  
5 keep in your files.

6 THE WITNESS: No. If -- if payment was  
7 made that would be the only documents they'd --  
8 the only documents would be the claim and the  
9 check.

10 MR. CRAIG: You would have the check in  
11 your files, or a copy of the check?

12 THE WITNESS: No, the voucher of the  
13 check -- which I <sup>sent</sup> ~~see~~ was transported to Wethers-  
14 field. There's nothing kept in the local office;  
15 after a total amount of payments for a day is  
16 added up they're sent to Wethersfield.

17 THE COURT: Mr. Glennen, let me ask you this  
18 question:

19 If I wanted to know whether a man collected  
20 unemployment compensation on a particular date or  
21 whether he did not collect unemployment  
22 compensation on a particular date, what would you  
23 look at in your records to give me an answer that  
24 would be a correct one?

25 THE WITNESS: We would look at our claim

record card that was kept in the local office.

THE COURT: Do you have Joseph Burroughs' claim record card with you?

THE WITNESS: I do, a copy of which -- right -- I presented.

MR. CRAIG: Would you also be able to tell from a cancelled check that you received as to the date?

MR. PICKERSTEIN: Objection, your Honor. That does not go to the admissibility of the documents that are being offered. It may go to the weight of the testimony but not to the documents that are being offered.

THE COURT: I will have him ask that question, in view of the Court's question.

Would your returned checks also tell you?

THE WITNESS: The date that it was paid would be on the return check.

MR. CRAIG: And the date that it was cashed; would it not?

THE WITNESS: Well, the bank would put that on.

MR. CRAIG: The bank would put that on. You would have the date that it was given to the



1  
2 payee?

3 THE WITNESS: That it was issued, date  
4 issued.

5 MR. CRAIG: So you would look at the claim  
6 card; is that right?

7 THE WITNESS: Claim record card, right.

8 MR. CRAIG: Claim record. This is a book  
9 that is kept in the office, the Unemployment  
10 Compensation Office?

11 THE WITNESS: It's a folder.

12 MR. CRAIG: It is a folder?

13 THE WITNESS: Right.

14 MR. CRAIG: And each individual claimant  
15 has a folder --

16 THE WITNESS: Correct.

17 MR. CRAIG: -- of his own?

18 THE WITNESS: That's right.

19 MR. CRAIG: So, if I were working in that  
20 office and someone came in to collect my  
21 unemployment from me, I would have to go to his  
22 file; right?

23 THE WITNESS: Right. That's right, yes.

24 MR. CRAIG: And fill out the card in the  
25 file?

1  
2 THE WITNESS: No. The card is presented  
3 by the claimant --

4 MR. CRAIG: I am talking about this document.

5 THE WITNESS: That's right. You would  
6 fill out the claim record card of whoever you were  
7 servicing at the time.

8 MR. CRAIG: So you would have to go to his  
9 file, withdraw the file, take out this document  
10 and fill it out; is that right?

11 THE WITNESS: That's right.

12 MR. CRAIG: Is that what happens?

13 THE WITNESS: Yes, right.

14 MR. CRAIG: Is that done contemporaneously  
15 with the person coming to pick up the check, or  
16 is it taken off of other records?

17 THE WITNESS: Well, the person is scheduled  
18 in at a certain time.

19 MR. CRAIG: Right.

20 THE WITNESS: At that time there are  
21 specific numbers of lines set up. He gets in  
22 that line. His record is in that particular box  
23 that the examiner has. When he approaches the  
24 counter, then they check his social security  
25 number and the record is pulled out of the box



that's on the counter.

MR. CRAIG: This record?

THE WITNESS: That record, right.

MR. CRAIG: This claim card?

THE WITNESS: This claim record card.

MR. CRAIG: Is that right?

Then the person who is filling this out would be required to put the date that the payment was made?

THE WITNESS: The date that the payment was made and their initials. If no payment is made, then the date in which they take the claim is listed.

MR. CRAIG: The subpoena that you received asked for all Connecticut State Unemployment Compensation Commission records for Joseph Burroughs for the period January 1, 1975 through August 1, 1975; is that correct?

THE WITNESS: That's correct.

MR. CRAIG: And this is in response to that subpoena, all the records for Mr. Burroughs from January 1st, 1975, with respect to this kind of a document?

MR. PICKERSTEIN: Objection, your Honor.

I do not see how this goes to the admissibility of the particular document that has been offered.

THE COURT: What did you bring with you pursuant to that subpoena?

THE WITNESS: I have further records I presented, after -- if you will notice, on the claim record card, he has exhausted benefits on that particular card.

MR. CRAIG: I do not think you ought to testify about what the substance of the documents--

THE WITNESS: I brought further records, then.

THE COURT: I will hear argument on the admissibility, 17 or 18.

MR. CRAIG: Your Honor, I would like to have an opportunity to look at what the individual brought in his documents. This is the first time I have seen these documents.

THE COURT: You just objected to him telling you what he brought. Two minutes ago you said don't testify.

MR. CRAIG: No, he was saying what these documents had in them. I have not seen these yet. I would like an opportunity, if I could, to



1  
2 look at these.

3 THE COURT: The Government has not offered  
4 those, but you can look at them.

5 MR. CRAIG: I am sorry, I have to -- this  
6 is a different document, is it not from  
7 Government's Exhibit 17?

8 MR. PICKERSTEIN: One moment.

9 Your Honor, I do not know -- Mr. Craig is  
10 showing him documents that have not been marked,  
11 and there is no way the record is going to show  
12 what those are.

13 THE COURT: Mark them for identification.

14 MR. CRAIG: Marked for identification.

15 THE COURT: Exhibit what?

16 THE CLERK: H.

17 THE COURT: H for identification. All  
18 right. Now we know what you are talking about.  
19 Go ahead.

20 Mr. CRAIG: Would you mark this one as  
21 well. This one as well? And this one?

22 Referring to Defendant's H and Defendant's  
23 J -- no, I am sorry, that is part of H, I guess,  
24 two documents are part of H -- could you tell us  
25 what that is?

1  
2 THE WITNESS: This is a record of payments  
3 made on an extended benefit program, which is in  
4 effect at this time and was at the times listed  
5 here, which is in August of '75.

6 MR. CRAIG: That is also for Mr. Burroughs?

7 THE WITNESS: For Mr. Joseph Burroughs,  
8 yes.

9 MR. CRAIG: And this one, referring to the  
10 second document, that has the "EC" at the top?  
11 What is that for?

12 THE WITNESS: That's emergency compensation,  
13 which is a second extension -- benefits -- that is  
14 now effect.

15 MR. CRAIG: These are records that keep the  
16 same kind of information that the document,  
17 Government's Exhibit 17, does?

18 THE WITNESS: That's correct.

19 MR. CRAIG: But they appear to be on a  
20 different form; do they not?

21 THE WITNESS: Well, it's a different form  
22 because of the fund in which the money comes in.  
23 This is the original document, which, as such,  
24 would be folded like this. These are cardboard  
25 cards that fit into the record, which is all kept



1  
2 together at the time in the local office.

3 MR. CRAIG: What did that document repre-  
4 sent? What does the information reflect in that  
5 document?

6 MR. PICKERSTEIN: Which document is he  
7 referring to, your honor?

8 MR. CRAIG: I am sorry, referring to  
9 Government's Exhibit 18.

10 THE WITNESS: 18, these are the records  
11 that are kept in central office and posted when  
12 sent from local offices, and this indicates that  
13 the -- the last posting that they posted for  
14 Joseph Burroughs.

15 MR. CRAIG: That gives you the date; does  
16 it not?

17 THE WITNESS: The date and the week end  
18 date, correct, the date paid and the week ending  
19 date and the amount of the check, and the balance  
20 of the payments left for his original entitlement.

21 MR. CRAIG: Referring to Government's  
22 Exhibit 4, which refers to the extended benefits,  
23 what does the "EC" stand for?

24 MR. PICKERSTEIN: Government's Exhibit 4?

25 MR. CRAIG: I mean Defendant's H. I

1  
2 apologize.

3 Did these payments reflected in Defendant's  
4 Exhibit H supplement the payments reflected in  
5 Government's Exhibit 18?

6 THE WITNESS: No, because the posting is  
7 not current. In other words, the payment  
8 throughout the state are not -- it's not possible  
9 to post them immediately after payment. They  
10 are behind in the posting. That's why nothing  
11 shows up on the other two cards.

12 MR. CRAIG: They are behind on the posting?

13 THE WITNESS: Right.

14 MR. CRAIG: So this would not be an accu-  
15 rate reflection of what he was paid from February  
16 9th on; is that right?

17 THE WITNESS: It would indicate what was  
18 paid there.

19 MR. CRAIG: It would not indicate what was  
20 paid?

21 THE WITNESS: No, no.

22 MR. CRAIG: Would there be a comparable  
23 sheet relating to February 9, 1975 and after that,  
24 for payments after February 9, 1975?

25 MR. PICKERSTEIN: Your Honor, I am going



1  
2 co object again.

3 THE COURT: Yes, we seem to be going --

4 MR. CRAIG: Your Honor, this is for a  
5 period of time that is not covered by Mr.  
6 Burroughs' testimony. It is not a complete file.  
7 There are records absent.

8 THE COURT: Excuse me. It does not cover  
9 his testimony?

10 MR. CRAIG: I do not believe it does, your  
11 Honor. The area he just --

12 THE COURT: Is that for the month of  
13 February 1975? Do you have anything there that  
14 would aid you in testifying with respect to  
15 February 1975?

16 MR. CRAIG: Up until a certain date in  
17 February it is possible, your Honor, but beyond  
18 that date --

19 THE COURT: We are interested, Mr.  
20 Glennen, whether or not a payment from your office  
21 was made on February 18, 1975. Without telling  
22 us what the answer is, I first want to know can  
23 you answer that question from the documents you  
24 have in front of you, whether or not an unemploy-  
25 ment check was paid to a particular person on a

particular date in February; namely, February 18, 1975.

THE WITNESS: Yes, I can.

THE COURT: In other words, if you were asked did Mr. Joseph Burroughs receive an unemployment compensation check on February 18, 1975, you could look at your records and answer that question?

THE WITNESS: I could.

THE COURT: All right. Objection is overruled.

What would you be looking at to answer that question? Which document?

THE WITNESS: The claim record card.

THE COURT: What is the number on that document, the exhibit number?

THE WITNESS: One would be No. H, defense H, and Government's 17, 17.

THE COURT: What are you offering?

MR. PICKERSTEIN: I am offering Government's 17, your Honor. I will also offer Defendant's H.

THE COURT: Very well. The objection, if any, to those exhibits --

MR. CRAIG: I am fastening the two documents



1  
2 together.

3 I would register a very strong objection to  
4 this documentary evidence.

5 THE COURT: On what grounds, though?  
6 That is what I want to know.

7 MR. CRAIG: First on relevance, your Honor;  
8 second, on it is not a complete business record.  
9 So I have no way of knowing to what extent they  
10 have selected out records that reflect the 18th.  
11 With respect to this document here --

12 THE COURT: Yes.

13 MR. CRAIG: -- the paper --

14 THE COURT: When you say "here" --

15 MR. CRAIG: Government's 17. I apologize  
16 again.

17 The last entry on the paper is also the  
18 second-to-the-last entry on the page, and that  
19 ends on February 10th. There are some ink  
20 markings on there, but there is no indication that  
21 there is an additional page where additional  
22 entries may exist, and there is no indication  
23 that he, this gentleman, knows whether such a  
24 page might exist somewhere.

25 THE COURT: I am not sure I understand.

MR. CRAIG: Let me show you Government's 17, and let me also show you Government's 18. Government's 18, which I think is based on Government's 17, also ends on that date, and the witness testified that the reason there are no entries after the 10th is because they were delayed or they were not put in the computer or something happened.

THE COURT: I am missing something.

Mr. Glennen, how can you tell me that you can determine if a check has been paid on a certain date, if Mr. Craig is correct when he says -- if he is correct -- that you do not have the records here with you, that they are not up to date?

THE WITNESS: The local office records are up to date, your Honor, and I have those with me.

THE COURT: Do you have those with you?

THE WITNESS: Yes.

THE COURT: All right, let me ask you the question again:

Can you tell me if a person walked into the Unemployment office in Bridgeport and got paid a check -- can you tell me whether or not that check was paid on February 18, 1975, if his name



1  
2 was Joseph Burroughs?

3 THE WITNESS: By the records that I brought  
4 with me, I can, your Honor.

5 THE COURT: What record are you now looking  
6 at to give me that information?

7 THE WITNESS: The local office records from  
8 Bridgeport.

9 THE COURT: All right. What is the number  
10 on that record?

11 THE WITNESS: Well, I need both documents,  
12 your Honor. That one --

13 THE COURT: 17 and --

14 THE WITNESS: 17 and 4.

15 MR. CRAIG: Defendant's H.

16 THE COURT: And H.

17 It is your testimony that you can answer  
18 the question by looking at those two documents;  
19 is that correct?

20 THE WITNESS: That's correct.

21 THE COURT: All right. What are the  
22 objections that go to admissibility rather than  
23 weight?

24 MR. CRAIG: My objection is to completeness,  
25 your Honor. First of all, there is a totally

different kind of document --

THE COURT: That goes to weight, not admissibility. He said he can answer the question by looking at those documents. You can cross-examine him.

MR. CRAIG: Wait a second. It seems to me if there is another document, your Honor, after this one, that is similar to this document, that has additional payments on it for the month of February, that is relevant and we should be entitled to it.

THE COURT: Find out if there is such a document.

MR. CRAIG: Do you know if there is such a document?

THE WITNESS: There is no such document.

MR. CRAIG: Did you conduct a search, yourself, on that, for such a document?

THE WITNESS: No, I did not.

MR. CRAIG: Do you know whether such a document exists?

THE WITNESS: Your Honor, could I ask a -- if I'm allowed to explain what this means here, I think you'll understand what the story is as



far as payments go.

THE COURT: All we want to know is -- we want to ask you a simple question, sir -- can the State of Connecticut, through you, tell us if an unemployment check was paid to Joseph Burroughs on February 18, 1975.

THE WITNESS: And I say I can answer that from these documents if allowed to.

THE COURT: All right. And the two documents are H and 17?

THE WITNESS: And 17.

THE COURT: All right. What are your objections to H and 17?

MR. CRAIG: I think I am entitled to find out how he is able to answer that question, your Honor, since he is not the one that produced the documents.

THE COURT: Do you challenge the testimony that these are records kept in the ordinary course of business of the State of Connecticut's Unemployment Bureau, Labor Department? And I am referring particularly to 17 and H.

MR. CRAIG: No, the specific documents here I do not dispute were kept.

1  
2 THE COURT: All right.

3 MR. CRAIG: The question I have --

4 THE COURT: Do you have any objection that  
5 these are duplicates of documents kept by the  
6 State Labor Department?

7 MR. CRAIG: No, I have no dispute on that.

8 THE COURT: All right. Your objection is  
9 that there may be other records that would  
10 indicate something else?

11 MR. CRAIG: That is correct.

12 THE COURT: All right. That all goes to  
13 weight but not admissibility. This witness has  
14 stated he can answer the Court's question, or  
15 the question posed by Mr. Pickerstein, by  
16 looking --

17 MR. CRAIG: At the documents.

18 THE COURT: -- at the documents. You can  
19 cross-examine him later to show that his answer  
20 is incorrect or should be modified or should not  
21 be believed. But this is his testimony, and it  
22 is up to you to cross-examine him.

23 MR. CRAIG: Thank you, your Honor.

24 THE COURT: The objection is overruled.

25 H and 17 may come in.



(Government's Exhibit 17 and Defendant's  
Exhibit H in evidence)

THE COURT: Ask your question, Mr. Picker-  
stein.

BY MR. PICKERSTEIN:

Q Sir, will you look at Defendant's Exhibit H and  
Government's Exhibit 17 and tell us if Joseph Burroughs  
received an unemployment check from the Connecticut State  
Department of Labor on February 18, 1975?

A He did not.

Q Can you tell us when he did receive an unemployment  
check from the State of Connecticut during the month of  
February 1975?

A He received a check on February 10, 1975.

Q Can you tell us how you know that he received that  
check on February 10, 1975?

A From the document in front of me. The claims  
examiner has noted the proper date that his claim was paid,  
2/10, and the "P" means paid in person.

Q That means that Mr. Burroughs appeared in the  
office on that date --

A That's correct.

Q -- according to the records?

A According to our records.

THE COURT: When did he get his next check?

THE WITNESS: He got his next check in August of '75.

THE COURT: So he received no unemployment checks other than on February 10th during the month of February 1975; is that your testimony?

THE WITNESS: That is my testimony.

THE COURT: Very well.

MR. PICKERSTEIN: Nothing further, your Honor.

THE COURT: All right, cross-examination.

CROSS-EXAMINATION

BY MR. CRAIG:

Q The entry that appears on the bottom of Government's 17 from which you are referring to the February 10th payment -- that is the last entry; is that not correct?

A That's correct.

Q That is at the bottom of the page; isn't that right?

A That's right.

Q Do you know, sir, whether there is a second page that is part of that file, that followed that page?

A There would be no second page to the document as such, because it indicates that he had no more payments



1  
2 coming to him after the 10th of February.

3 Q Where does it indicate that?

4 A Right here, with the number of the payment made,  
5 "1," and the notation that he would be --

6 THE COURT: What is the notation?

7 A -- "2 EB."

8 THE COURT: What does that mean?

9 THE WITNESS: That means two extended  
10 benefits.

11 BY MR. CRAIG:

12 Q That moves us over to Defendant's Exhibit H;  
13 does it not?

14 A It does.

15 Q Presumably that information would be recorded on  
16 this computer printout here; is that right?

17 A What information?

18 Q Any additional payments made under extended  
19 benefits; is that right?

20 A The payments for the regular compensation have  
21 been listed on the printout from Wethersfield, which is an  
22 additional record to the claim record card in the local office.

23 Q Right. Would this printout also reflect payments  
24 made under extended benefits?

25 A If posted, it would indicate all payments.

1  
2 Q There are no payments here indicated; is that  
3 correct?

4 A Well, there's a pencil notation that has been put  
5 in for --

6 Q Did you put this pencil in?

7 A No, I didn't.

8 THE COURT: What date is the pencil  
9 notation?

10 MR. CRAIG: There is an August date.

11 BY MR. CRAIG:

12 Q But you cannot testify, without looking at the  
13 pencil, as to whether or not payments were made -- when the  
14 first payment in the extended benefits was made; can you?

15 A I can tell by looking at the claim record card --

16 Q Okay.

17 A -- of the extended benefits.

18 Q All right.

19 A The first extended benefit payment was for week  
20 ending August 2nd and paid on August 4th.

21 Q That would tell you the first EB, extended  
22 benefit, payment that he would receive, is that right?

23 A That's right.

24 Q Ordinarily in the course of unemployment  
25 compensation is there a three-month gap between the period of



1  
2 time someone goes from the regular unemployment compensation  
3 to extended benefit?

4 A There's no set time. Depending on when the  
5 claimant might file; if eligible at the time, he could -- at  
6 present time -- he could continue right on, you see.

7 Q Into the extended benefits?

8 A Into the extended benefits.

9 In this particular case the record indicates that  
10 an availability report was written on August 4th, indicating  
11 he had not been filing for some time.

12 Q Did you request checks, copies of cancelled  
13 checks, that might indicate when payments were made to Mr.  
14 Burroughs during the months of January and February?

15 A I didn't request checks, no. I didn't request  
16 anything. The subpoena was sent to Wethersfield, and they  
17 made a record of everything that indicates payments were made.

18 Q So either you or someone in the Unemployment  
19 office did not request checks on this; is that right?

20 A Cancelled checks you mean?

21 Q Yes.

22 A Not to my knowledge they didn't. I have no  
23 record of it.

24 Q But cancelled checks do exist; is that correct?

25 MR. PICKERSTEIN: If he knows, your Honor.

1  
2 A Cancelled -- well, if -- if cancelled, they exist  
3 somewhere, if they've been paid. They're either cancelled  
4 in Wethersfield or haven't -- or haven't gone through the  
5 bank as yet.

6 Q Presumably you would have cancelled checks for the  
7 date of February 10th which is entered on that sheet of paper;  
8 is that right?

9 MR. PICKERSTEIN: Objection, your Honor.

10 THE COURT: Overruled.

11 A What was the question?

12 Q If there was a payment made to Mr. Burroughs on  
13 February 10th, you would have a cancelled check or a voucher  
14 that reflected that fact; would you not?

15 A That's correct.

16 Q But you have not brought that with you today?

17 A The cancelled check I don't have with me.

18 Q Nor have you brought any vouchers today; have you?

19 A No vouchers have been presented.

20 Can I add something? The --

21 Q There is no question pending. I have to ask you  
22 a question first.

23 Referring to Defendant's Exhibit J for  
24 identification, what is this document?

25 A That's a copy of a determination for a Joe



Burroughs.

Q What is a determination?

A Determines whether or not you are eligible for unemployment based on your earnings for a certain period.

Q Is there a date when that was applied for?

MR. PICKERSTEIN: Your Honor, is Mr. Craig offering that?

THE COURT: If that is an objection, it is overruled.

Go ahead. Can you tell if that is dated?

BY MR. CRAIG:

Q And when the application was made?

A The only date would be the date it was computed in Wethersfield, which was 1/12/76.

Q You do not have to testify about that. The question I am asking you about is when the unemployment compensation -- if it would reflect when the unemployment compensation benefits began for Mr. Burroughs.

A No, it would not.

Q Would it reflect his former employment?

A Part of his former employment, it would.

Q Do you know if this is the only document relating to Mr. Burroughs in your files or in the Unemployment Compensation files relating to February 1975?

1  
2 A In actuality, this doesn't refer to February  
3 1975, this document.

4 Q That is not my question.

5 Do you know if there are any documents like that  
6 that do refer to 1975, February 1975?

7 A Not in particular to '75. It would concern a  
8 four-quarter period.

9 Q Could you tell me the purpose of this document?

10 A The purpose of the document is to determine  
11 whether or not you are eligible for unemployment. In this  
12 particular case he wasn't eligible for regular unemployment  
13 because he hadn't worked long enough, you see.

14 Q Does it give the date that the determination is  
15 made?

16 A The date that it was made was 1/12/76. The  
17 period covered would be from 1/4/76 to 1/1/77. He has  
18 two quarters of employment listed, which is not sufficient to  
19 qualify for regular benefits.

20 MR. CRAIG: I would offer it, your Honor.

21 THE COURT: All right.

22 MR. PICKERSTEIN: No objection, your Honor.

23 THE COURT: Very well, full exhibit, J.

24 (Defendant's Exhibit J in evidence)

25 MR. CRAIG: Could I have this identified?



THE CLERK: It is.

BY MR. CRAIG:

Q Referring to Defendant's Exhibit I, could you tell us what this document is?

A This is a photostat of a claim for Joseph Burroughs for a week ending August 9, '75, a copy of an IBM punch card.

Q Would that reflect unemployment compensation due him for a period of one week?

A It would.

MR. CRAIG: I would offer it, your Honor.

THE COURT: Any objection?

MR. PICKERSTEIN: I fail to see the relevance, your Honor, but I won't object.

THE COURT: Very well, full exhibit.

(Defendant's Exhibit I in evidence)

Q From whom in the Unemployment Compensation office did you receive these documents?

A From whom?

Q Yes.

A William Kegler, who is in charge of records in Wethersfield regarding unemployment payments.

Q In providing these documents, did you question Mr. Kegler as to what the meaning of the documents was?

A As to what the meaning was I did not question him,

1  
2 because I knew what the meaning was of the documents. I  
3 handled them every day.

4 Q Did you question him as to the process he used to  
5 obtain the documents?

6 A No, I didn't.

7 Q Didn't ask him any questions about that?

8 A No.

9 Q Where does Mr. Kegler work, incidentally?

10 A Folly Brook Boulevard in Wethersfield, Connecticut.

11 Q That is the headquarters in the state?

12 A Right.

13 Q The federal unemployment compensation?

14 A That's correct.

15 Q Did Mr. Kegler volunteer an opinion to you on the  
16 reliability of these documents?

17 MR. PICKERSTEIN: Objection, your Honor.

18 MR. CRAIG: Yes or no question, your Honor.

19 THE COURT: Let's find out what he knows  
20 about the reliability, from any source. We want  
21 to make sure they are reliable. If there is  
22 any doubt about it, let us know, Mr. Glennen.

23 THE WITNESS: I have no doubt whatsoever  
24 of the correctness of the documents, your Honor.

25 THE COURT: I am sorry, I did not hear you.



THE WITNESS: I say I have no doubt in my mind whatsoever as to the correctness of the documents.

A Mr. Kegler did not make a statement to me one way or another whether they were correct or not.

Q Did he tell you anything about the state of the central files, the Unemployment office in Wethersfield?

A About the state of them?

Q Yes.

A No. We had no conversation at all except that he was sending me the records.

Q Didn't tell you that the files were confused?

A No.

Q Didn't tell you that there wasn't anything definite in the files that he found when he went there?

A That there was nothing definite there?

Q Yes.

A No, he made no such statement to me.

Q Didn't make any statement that the local office of the Unemployment Compensation in Bridgeport had even less information than the central files did about this case?

A Not to me, he didn't make any statement to that effect.

Q Did he tell you that, although there were no

records of payment, that did not mean necessarily that some payments might not have been made?

A He did not.

Q Didn't tell you that?

A No.

MR. CRAIG: I have no further questions,  
your Honor.

THE COURT: All right.

REDIRECT EXAMINATION

BY MR. PICKERSTEIN:

Q Just one question, sir:

Can you look at the documents that you have in front of us and tell us whether any benefits were paid by the State of Connecticut to Mr. Joseph Burroughs between February 10, 1975 and August 4, 1975?

A There's no record of any payment made between those two dates.

MR. PICKERSTEIN: Nothing further, your Honor.

THE COURT: The Court has a question.  
Would you give us your background with the State Labor Department?

THE WITNESS: I have been employed by the State Labor Department for fifteen years, and



1  
2 during the fifteen years I've worked in local  
3 offices and central office concerning unemployment  
4 compensation benefits, been the manager of the  
5 New Haven Unemployment office for three years,  
6 which is the largest one in the state at the  
7 present time.

8 THE COURT: During the course of your  
9 employment over these years, have you had  
10 occasion to read and interpret such documents as  
11 are now before the jury in this case?

12 THE WITNESS: Yes, I have, your Honor.

13 THE COURT: For how many years have you  
14 been doing that?

15 THE WITNESS: Well, at least five years.

16 THE COURT: Have you ever appeared in court  
17 in response to subpoenas on prior occasions,  
18 other than today?

19 THE WITNESS: I have, your Honor.

20 THE COURT: Have you testified in other  
21 cases --

22 THE WITNESS: I have.

23 THE COURT: -- with respect to State Labor  
24 Department records?

25 THE WITNESS: I have, your Honor.

1  
2 Q Where he worked for Carolina Freight?

3 A Yes.

4 Q And it went on to say that he told that you  
5 traveled in an MG which belonged to Norman Adams --

6 A That's correct.

7 Q -- whose address he didn't know?

8 A Yes, that's correct.

9 Q Is that correct?

10 A That is correct.

11 MR. CRAIG: I have no further questions,  
12 your Honor.

13 THE COURT: Redirect?


14 MR. PICKERSTEIN: No redirect, your Honor.

15 THE COURT: You are excused, Mr. Smith.

16 (Witness excused)

17 MR. PICKERSTEIN: That concludes the  
18 Government's rebuttal evidence, your Honor.

19 THE COURT: Do you have anything else, Mr.  
20 Craig?

21  MR. CRAIG: I would request an opportunity  
22 to present some surrebuttal evidence, your Honor,  
23 with respect to the Unemployment Compensation  
24 office.

25 THE COURT: I think I'd better hear you on



1  
2 that.

3 I will excuse the jury, and we will call you  
4 back in a few minutes.

5 (Jury out at 2:40 o'clock p.m.)

6 THE COURT: All right, go ahead.

7 MR. CRAIG: Your Honor, the surrebuttal  
8 evidence that I would request the opportunity to  
9 present is contained in this report written to me  
10 by Mr. Robert Porter. I would submit it as a  
11 court exhibit, your Honor, if I might, and ask  
12 for your ruling on it.

13 THE COURT: What is it that you want?

14 MR. CRAIG: It indicates that Mr. Porter  
15 interviewed Mr. William Kegler, who was doing  
16 the research into Mr. Burroughs' file in the  
17 Unemployment Compensation office, and that Mr.  
18 Kegler indicated -- and I am now reading the  
19 report -- that the records maintained in their  
20 central files are confused and there doesn't seem  
21 to be anything definite. Mr. Kegler sent an  
22 assistant to the local unemployment office, but  
23 it was found that the local office had even less  
24 information in their files. Also appearing on  
25 the report is Mr. Kegler's comment that, although

1  
2 MR. PICKERSTEIN: When I received Mr.  
3 Craig's indication that he intended to rely upon  
4 alibi and that his alibi witness was Mr. Joseph  
5 Burroughs, I pursuant to twelve one indicated  
6 that I intended to rely upon the records of Mr.  
7 Pescatello or his representative of the  
8 Unemployment Compensation Bureau to rebut Mr.  
9 Burroughs' testimony.

10 I think, since Mr. Craig has been on notice  
11 of that for some period of time, this is much too  
12 late to offer, number one. Number two, it is  
13 all hearsay. I do not know who he is going to  
14 put on the witness stand, but apparently he does  
15 not have Mr. Kegler here.

16 THE COURT: The third thing that comes to  
17 mind is that, if you had indicated this earlier  
18 today, we maybe could have gotten your witness  
19 down here this afternoon, but now I will have to  
20 continue the case over the weekend to call a  
21 witness that you should have had under subpoena,  
22 knowing full well what the Government's presenta-  
23 tion was going to be.

24 Let me see Mr. Porter's report.

25 This report indicates that Mr. Porter's



there were no records of payments, this doesn't mean that no payments were made.

THE COURT: Mr. Pickerstein, what would you like to say?

MR. PICKERSTEIN: I would simply say two things, your Honor:

First of all, Mr. Craig has been on notice since at least ten days and possibly more that the Government intended to rely upon records of the Unemployment Compensation --

THE COURT: How did that come about?

MR. PICKERSTEIN: I filed a notice of alibi, Mr. Craig complied with it, I complied with the notice as well gave forth the names of the witnesses or representatives who were going to testify.

THE COURT: Did you indicate you were going to call a representative from the State Labor Department?

MR. PICKERSTEIN: I did, your Honor.

THE COURT: And that notice was mailed or given to Mr. Craig?

MR. PICKERSTEIN: It was, your Honor.

THE COURT: What else did you indicate?

1  
2 investigation revealed exactly what the witness  
3 from the State Labor Department testified to;  
4 that is, that the last payment on the regular  
5 claims basis was made on February 10, 1975, and  
6 that extended claims were initiated and approved,  
7 and, of course, that is what the witness also  
8 said this morning.

9 The aspect that I assume you wish to get  
10 into evidence is that "Although there are no  
11 records of payments, this doesn't mean that no  
12 payments were made." Whatever that really means,  
13 I'm not sure.

14 MR. CRAIG: And the comments, your Honor,  
15 as to the general reliability.

16 THE COURT: It is difficult to understand  
17 how a payment could be made and there is no  
18 record of it, because a payment is made through a  
19 check. Does it mean that they do not keep the  
20 checks or their files sometimes do not reflect  
21 that a check was given, or are they talking about  
22 some other case and not the Joseph Burroughs case?

23 But, in any event, the lead-in paragraph  
24 states "AUSA P. Kerstein has indicated he will  
25 rely on the testimony provided by John



1  
2  
3 Pescatello of the above department to refute  
4 the testimony of Joseph Burroughs, our client's  
5 alibi witness," and I would think that, if this  
6 witness was deemed to be important, he should  
7 have been under subpoena and here today. I have  
8 heard nothing earlier that should have come as a  
9 surprise to you based on what Mr. Pickerstein  
10 said and what this memo bears out. The memo has  
11 a January 22, 1976 date.

12 MR. CRAIG: That is correct, your Honor.  
13 The only surprise, I suppose, is that it was my  
14 understanding from our investigation that Mr.  
15 Kegler was going to be the individual from the  
16 Unemployment Compensation Commission <sup>who</sup> and probably  
17 would be testifying in this matter. There was  
18 no representation --

19 THE COURT: Mr. Pickerstein's practically  
20 indicated this has been an open file case, and  
21 all you had to do was ask him who he intended to  
22 call, and I am sure he would have told you.

23 In any event, even your investigator  
24 indicates that Mr. Kegler was not the person that  
25 the Government was going to rely on.

Based on all the circumstances surrounding

1  
2 the rebuttal to the alibi witness' testimony,  
3 the request for a continuance is denied.

4 MR. CRAIG: My request, your Honor, was  
5 the capacity to put Mr. Porter on to testify in  
6 rebuttal and impeachment of the State Employment  
7 Compensation Commission's testimony as to the  
8 reliability of the records.

9 THE COURT: Could you give me an offer of  
10 proof on that?

11 MR. CRAIG: It is contained there. your  
12 Honor, as to the comments of Mr. Kegler, as a  
13 representative of the State Unemployment Commis-  
14 sion.

15 THE COURT: That, of course, would be pure  
16 hearsay.

17 MR. CRAIG: If we are referring to the  
18 Commission, though, as a body, your Honor, and a  
19 representative of the Commission came and spoke,  
20 I think I am entitled to rebut his testimony  
21 with the statements of another representative  
22 of that Commission made to my investigator.

23 THE COURT: It is pure hearsay to allow  
24 your investigator to get on to testify to what a  
25 witness told him in the Connecticut State Labor



1  
2 Department, and, if the offer of proof is as set  
3 forth in this document, I am not sure that that  
4 even rebuts the testimony today, because the  
5 testimony seemed to me to be focused on Joseph  
6 Burroughs. A good portion of this memorandum  
7 has to deal with central files and are conclusory  
8 in nature and do not even address themselves to  
9 any particular person -- Joseph Burroughs.  
10 For example, I have no idea what this means:  
11 "Mr. Kegler sent an assistant to the local  
12 unemployment office, but it was found that the  
13 local office had even less information in their  
14 files." About whom or about what?

15 Under all the circumstances, based on the  
16 offer of proof and this memorandum, which really  
17 should be marked as an exhibit, a court exhibit,  
18 for another forum, if that becomes necessary,  
19 the objection is sustained.

20 You can put him on. I do not want you to  
21 think you are being prevented from putting him --

22 MR. CRAIG: That would be the only purpose,  
23 your Honor.

24 THE COURT: I would sustain all objections  
25 to his reciting what he heard from a third party

who is available and subject to cross-examination.

MR. PICKERSTEIN: Your Honor, just for completeness of the record, if I may, the Government's demand on the defendant pursuant to Rule 12.1 of the Federal Rules of Criminal Procedure with respect to notice of alibi was dated January 7, 1976, Mr. Craig's response is dated January 8, 1976, in which he indicated he intended to rely upon Mr. Burroughs, and my response to Mr. Craig as to my rebuttal of Mr. Burroughs' testimony was dated January 12, 1976. Copies of all of those letters should be in the court file.

THE COURT: And Mr. Porter's memorandum is dated, I believe, January 22, 1976.

MR. CRAIG: That is correct.

MR. PICKERSTEIN: Very well, your Honor.

THE CLERK: Court Exhibit No. 1, your Honor.

THE COURT: Court Exhibit No. 1 -- and be sure that does not get into the Jury room.

(Court Exhibit 1 in evidence)

THE CLERK: You were going to put on the record the reasons for --



UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA :  
V. : CRIMINAL NO. N-75-20  
WILLIAM E. ROBINSON :

DEFENDANT ROBINSON'S REQUEST TO CHARGE

The defendant, William E. Robinson, respectfully submits  
the attached proposed instructions with the request that they  
be included in the Court's charge to the jury.

THE DEFENDANT  
WILLIAM E. ROBINSON

BY

\_\_\_\_\_  
Gregory B. Craig  
Federal Public Defender  
770 Chapel Street  
New Haven, Connecticut

Date: January 28, 1976

APP 203

Instruction Number 1: Testimony of David Tate

An accomplice is one who unites with another person in the commission of a crime, voluntarily and with common intent. By his own testimony, David Tate was an accomplice in the alleged crimes which are the subject matter of this trial.

Experience has shown that an accomplice who gives evidence against other persons may be impelled to do so by motives which may preclude his telling the truth. In other words, he may have a reason to lie as to the material facts, and it is your duty to give careful consideration to that fact. An accomplice, tainted as he is with past criminality, is often influenced in his testimony by motive, favor or pardon. Therefore, you must look carefully into any secret motives which might actuate bad minds and victimize the innocent. United States v. Kemble, 197 F.2d 316.



Experience has also shown that accomplices may be motivated to place the responsibility for crimes on others than themselves. Accordingly, an accomplice's testimony is always to be received with extreme caution and weighed with great care. Such testimony should be closely examined, checked with the facts which you find to exist in this case, and against the evidence which may corroborate them, and then you should give the testimony such weight as you deem proper. United States v. Projansky, 465 F.2d 123, 139 (2d Cir. 1972).

You should never convict a defendant upon the unsupported testimony of an alleged accomplice, unless you believe that unsupported testimony beyond a reasonable doubt. Devitt and Blackmar, Section 12.04.

*Given in substance,  
2-9-76*

FPI-88-2-3-75-SCM-887

*App 205*

(2) Are you satisfied that the identification made by the

Instruction Number 2: Testimony of Interested Witnesses

The testimony of an individual who provides evidence against a defendant for pay or in the hope of a more lenient sentence for himself or for any personal advantage must be examined and weighed by the jury with greater care than the testimony of an ordinary witness. The jury must determine whether the individual's testimony has been affected in any way by his own interests or by prejudice against the defendant. Devitt and Blackmar, Section 12.02.

You should ask yourselves whether or not a witness has any bias or interest in the outcome of the case, and if so, whether he has permitted that bias or interest to color his testimony. It does not follow simply from the fact that a witness does have a bias or interest in the outcome of the case that his testimony is to be disbelieved. There are many people who, no matter what their interest in the outcome of the case may be, would not testify falsely.



On the other hand, a jury should always bear in mind that if a witness has a decided bias or has an interest in the outcome of the case, that bias or interest offers something of a temptation to shade his own testimony in accordance with his bias or sway him to advance his own interest, whether that be to gain some advantage for himself or to do damage to another. It may even be that his bias or interest has so operated on his mind that he has come to believe what he wants to believe and therefore he may testify falsely without at the time consciously realizing it. It is obvious that if it should appear as regards any witness whose credibility you are testing that he has some bias or some interest in the outcome of the case, or some motive to falsify, that fact is one which you should take into consideration in weighing the testimony. United States v. Jenkins, Transcript, pp. 2409-2410.

Instruction Number 3: Eyewitness Testimony

All eyewitness testimony, whether the witness is identifying a defendant or a photograph, should be scrutinized with care and caution. This is especially true of witnesses whose opportunity for observation is limited and who may have observed individuals briefly or from a bad angle. Eyewitness testimony is often unreliable. When a witness identifies a photograph before he identifies the person in the flesh, an added risk is injected. Even if the police follow the most correct photographic identification procedures and show pictures of a number of individuals without indicating whom they suspect, there is danger that a witness may make an incorrect identification, and there is the further danger that the witness may retain in his mind's eye the image from the photograph rather than the image of the person that he saw committing the crime. This is not to say that you may not believe eyewitness identification testimony. But before you believe such testimony, you must carefully weigh the witness' ability to observe, the circumstances under which the observation was made, the consistency of the identification with any other identifications in the case and the inability of other witnesses in relatively the same position to make the same identification.

United States v. Jenkins,  
Transcript, p. 2406.



Instruction Number 4: Identification from Photographs

① It must be recognized that the use of photographs may sometimes cause witnesses to err in identifying criminals. A witness may have obtained only a brief glimpse of a criminal, or may have seen him under poor conditions. [Even if the police follow the most correct photographic identification procedures and show him the pictures of a number of individuals without indicating whom they suspect, there is some danger that the witness may make an incorrect identification.] This danger will be increased if the police display to the witness only the picture of a single individual who generally resembles the person he saw, or if they show him the pictures of several persons among which the photograph of a single such individual recurs or is in some way emphasized.

② Regardless of how the initial misidentification comes about, the witness thereafter is apt to retain in his memory the image of the photograph rather than of the person actually seen, reducing the trustworthiness of subsequent line-up or courtroom identification.

This is not to say that such testimony concerning the use of photographs is to be disregarded by you, but I instruct you to appraise carefully such testimony balanced by the testimony revealed during the cross-examination of such witnesses.

Simmons v. United States, 390 U.S.  
377-384 (1968)  
United States v. Fernandez, \_\_\_ F.2d  
\_\_\_ (2d Cir. 1972)

Instruction Number 5: Suggestability and Identification Testimony

Identification evidence is peculiarly riddled with innumerable dangers and variable factors which might seriously, even crucially, derogate from a fair trial. The vagaries of eyewitness identification are well-known; the annals of criminal law are rife with instances of mistaken identification.

Apart from the "dangers inherent in eyewitness identification" such as unreliable memory of perception, [a] major factor contributing to the high incidence of miscarriage of justice from mistaken identification has been the degree of suggestion inherent in the manner in which the prosecution presents the suspect to witnesses for pre-trial identification." The dangers of suggestion are not necessarily due to "police procedures intentionally designed to prejudice an accused." On the contrary, suggestion can be created intentionally or unintentionally in many subtle ways.

United States v. Charles J. Ash, Jr., 13 Cr.L 3217.  
(1973)



Instruction Number 6: The Fallibility of Identification Testimony

There is no question that identification testimony is notably fallible, and the result of it can be, and sometimes has been, the greatest single injustice that can arise out of our system of criminal law, namely the conviction of the wrong man through a mistake in identity. The dangers in this area have been well chronicled, and have been the proper subject of careful attention in this and many other courts and by members of the legal profession.

Gregory v. United States, 125 U.S.App.  
D.C. 140, 369 F.2d 185, 190 (D.C.  
Cir. 1966), cert. den. 396 U.S. 865  
(1969).

United States v. Evans, 484 F.2d 1178,  
1187 (2d Cir. 1973).

Instruction Number 7: Impeaching a Witness

The testimony of a witness may be discredited or impeached by showing that he previously made statements which are inconsistent with his present testimony. The earlier contradictory statements are admissible only to impeach the credibility of the witness, and not to establish the truth of these statements. It is the province of the jury to determine the reliability of and the credibility, if any, to be given the testimony of a witness who has been impeached.

If a witness is shown knowingly to have testified falsely concerning any material matter, you have a right to distrust such witness' testimony in other particulars; and you may reject all the testimony of that witness or give it such credibility as you may think it deserves.

If you find that a witness has deliberately lied on one material subject, it is only natural that you should be suspicious of his testimony on all subjects, and under those circumstances, you are entitled to disbelieve his whole testimony. Whether you do disbelieve it or not, however, lies in your own sound judgment. You have the right to reject testimony even though it is uncontradicted, if you feel you have a justifiable reason for doing so.

United States v. Santos, 372 F.2d 177,  
180 (2d Cir. 1967)

United States v. Jenkins, Transcript,  
pp. 2408-2409.

App 212 · Given in substance



Instruction Number 8: Burden of Proof and Identity

The burden of proof is on the prosecution with reference to every element of the crime charged and this burden included the burden of proving beyond reasonable doubt the identity of the defendant as the perpetrator of the crime charged.

Federal Jury Practice and Instructions, Vol. 1, §11.32.

Instruction Number 9: Weight of the Testimony

You, as jurors, are the sole judges of the credibility of the witnesses and the weight their testimony deserves.

You should carefully scrutinize all the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to show whether a witness is worthy of belief. Consider each witness' intelligence, motive and state of mind, and demeanor and manner while on the stand. Consider the witness's ability to observe the matters as to which he has testified, and whether he impresses you as having an accurate recollection of these matters. Consider also any relation each witness may bear to either side of the case; the manner in which each witness might be affected by the verdict; and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case.

Federal Jury Practice and Instruction, Vol. 2§ 72.01.

*given in substance.  
2-9-76.*



Instruction Number 10: Reasonable Doubt

You cannot convict the defendant on mere possibilities, surmises, or speculation, however strong they may be. A verdict of guilty based upon mere possibilities or surmises would violate the oath that you jurors have taken. Nor does the law permit you to guess or speculate as to the cause of the commission of the crime, much less as to who may have caused it. Where there are two possible causes for the crime complained of, for one of which the defendant is not responsible, and the evidence leaves the matter a mere possibility for speculation, surmise, or conjecture of the jury as to who was responsible for the crime, then the prosecution has failed to make out a case against the defendant and he must be acquitted.

Bailey & Rothblatt, at 440-444.

Denial

Instruction Number 11: Identification

One of the most important issues in this case is the identification of the defendant as the perpetrator of the crime. The Government has the burden of providing identity, beyond a reasonable doubt. It is not essential that the witness himself be free from doubt as to the correctness of his statement. However, you the jury, must be satisfied beyond a reasonable doubt of the accuracy of the identification of the defendant before you may convict him. If you are not convinced beyond a reasonable doubt that the defendant was the person who committed the crime, you must find the defendant not guilty.

Identification testimony is an expression of belief or impression by the witness. Its value depends on the opportunity the witness had to observe the offender at the time of the offense and to make a reliable identification later.

In appraising the identification testimony of a witness, you should consider the following:

(1) Are you convinced that the witness has the capacity and an adequate opportunity to observe the offender?

Whether the witness had an adequate opportunity to observe the offender at the time of the offense will be affected by such matters as how long or short a time was available, how far or close the witness was, how good were lighting conditions, whether the witness had had occasion to see or know the person in the past.



Instruction Number 12: Eyewitness Identification

There can be no doubt that, once a witness has made an identification, the image of the person identified will remain in his mind to some degree. Lapse of time between the crime and the confrontation is also important; the longer the interval, the greater the dangers that the initial image will have dimmed and that the second image will play a significant role. Also, a long interval between the initial observation and the trial coupled with an improper confrontation on a comparatively short time before the witness appears in court enhances the danger that he may be relying on his most recent encounter. And there is always the question how far in-court identification is affected by the witness' observing the defendant at the counsel table.

United States ex. rel. Phipps v. Follette, 482 F.2d 912 (1970)  
(2d. Cir.)

Instruction Number 13: Objections

It is the duty of the attorney on each side of a case to object when the other side offers testimony or other evidence which the attorney believes is not properly admissible. You should not show prejudice against an attorney or his client because the attorney has made objections.

Upon allowing testimony or other evidence to be introduced over the objection of an attorney, the Court does not, unless expressly stated, indicate any opinion as to the weight or effect of such evidence. As stated before, the jurors are the sole judges of the credibility of all witnesses and the weight and effect of all evidence.

When the Court has sustained an objection to a question addressed to a witness the jury must disregard the question entirely, and may draw no inference from the wording of it, or speculate as to what the witness would have said if he had been permitted to answer any question.

Federal Jury Practice and Instruction, Vol. 1, § 10.11.

*Given in substance -  
5-9-76.*



(2) Are you satisfied that the identification made by the witness subsequent to the offense was the product of his own recollection (or were other factors at work?). You may take into account both the strength of the identification, and the circumstances under which the identification was made.

If the identification by the witness may have been influenced by the circumstances under which the defendant was presented to him for identification, you should scrutinize the identification with great care. You may also consider the length of time that lapsed between the occurrence of the crime and the next opportunity of the witness to see defendant, as a factor bearing on the reliability of the identification.

(3) Finally, you must consider the credibility of each identification witness in the same way as any other witness, consider whether he is truthful, and consider whether he had the capacity and opportunity to make a reliable observation on the matter covered in his testimony.

I again emphasize that the burden of proof on the prosecutor extends to every element of the crime charged, and this specifically included the burden of proving beyond a reasonable doubt the identity of the defendant as the perpetrator of the crime with which he stands charged. If after examining the testimony, you have a reasonable doubt as to the accuracy of the identification, you must find the defendant not guilty.

United States v. Telfaire, 469 F.2d 552, 558 (D.C. Cir. 1972)

Given, 2-9-76

Instruction Number 14: Impeaching a Witness

A witness may be discredited or impeached by contradictory evidence; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, which is inconsistent with the witness' present testimony.

If you believe any witness has been impeached and thus discredited, it is your exclusive province to give the testimony of that witness such credibility, if any, as you may think it deserves.

Federal Jury Practice and Instruction, Vol. 2, §72.04

*given in substance  
2-9-76*



Instruction Number 15: Reasonable Doubt

Before you can convict the defendant of any degree of the crime charged, each member of the jury must be satisfied of his guilt to a moral certainty and beyond a reasonable doubt, otherwise he must be acquitted.

Instruction Number 16: Reasonable Doubt

The doctrine or rule of reasonable doubt is applied to every element or ingredient necessary to constitute the crime charged.

App 222



Instruction Number 17: Questioning by the Judge

During the course of a trial, I occasionally ask questions of a witness, in order to bring out facts not then fully covered in the testimony. Do not assume that I hold any opinion on the matters to which my questions may have related. Remember at all times that you, as jurors, are at liberty to disregard all comments of the Court in arriving at your own findings as to the facts.

Federal Jury Practice and Instruction, Vol. 1 §10.09

*Given. 2-3-76.*

Instruction Number 18: The Defense

The defendant has testified that he was somewhere else at the time this robbery was committed. He has sworn that he was not present at the time when or at the place where he is alleged to have committed the offense charged in the indictment.

If, after consideration of all the evidence in the case, you have a reasonable doubt as to whether the defendant was present at the time and place the alleged offense was committed, you must acquit him.

The jury will always bear in mind that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

Federal Jury Practice and Instruction, Vol. 1, §11.31

*Given in substance.  
J.B. 76.*

*App 224*



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

-----X  
:  
UNITED STATES OF AMERICA,  
:  
vs.  
:  
WILLIAM ROBINSON.  
:  
-----X

Criminal N 75-20

New Haven, Connecticut  
June 13, 1975

JURY CHARGE

B e f o r e:

Hon. JON O. NEWMAN, U.S.D.J.

A p p e a r a n c e s:

For the Government:

WILLIAM DOW, Esq.  
Asst. U. S. Attorney  
New Haven, Connecticut

For the Defendant:

GREGORY CRAIG, Esq.  
Federal Public Defender  
New haven, Connecticut

1 the bank tellers who the government has presented.

2 They have been referred to as eyewitnesses. And,  
3 indeed, they took the stand and gave you testimony of their  
4 recollection of what they saw. In any event, what they believe  
5 they saw. Now, all eyewitness testimony, whether or not a  
6 witness is identifying a defendant in person or in a photograph,  
7 should be scrutinized with care and caution. That is especially  
8 true of witnesses in a bank whose opportunity for observation is  
9 limited and who observed the robbers under conditions of extreme  
10 stress once the holdup began.

11 Eyewitness testimony is often unreliable. When a  
12 witness identifies a photograph before he sees the person in the  
13 flesh, an added risk is injected. Even if the police follow  
14 the most correct photographic identification procedures and show  
15 pictures of a number of individuals without indicating who  
16 they suspect, there is a danger that a witness may make an  
17 incorrect identification of a photograph, and there is the further  
18 danger that the witness may retain in his mind's eye the image  
19 from the photograph rather than the image of the person that he  
20 saw committing the crime. This is not to say that you may not  
21 believe eyewitness identification. But before you believe such  
22 testimony, you must carefully weigh the witness' ability to  
23 observe, the circumstances under which the observation was made,  
24 the consistency of the identification with other evidence in the  
25 case, any weakness in the witness' testimony that may have been



1 developed on cross examination or through other evidence.

2 Another circumstance that ought to weigh with you  
3 when you consider the reliability of eyewitness testimony in  
4 this case is the episode that was testified to that occurred  
5 some days ago in the hallway outside this courtroom where the  
6 defendant was seen coming to a court hearing by the witnesses.  
7 You have heard the testimony about that, and both sides have made  
8 claims from it. Again, I don't mean to suggest that because  
9 they saw the defendant on that occasion that their testimony  
10 ought to be rejected, but I do point out to you that you ought  
11 to be careful and cautious when you consider eyewitness  
12 testimony, because there are the risks that eyewitnesses can be  
13 wrong, and the risks arise when photographs are used or when  
14 a situation develops such as happened last week, where the  
15 witnesses see the defendant virtually alone and not amongst  
16 a group of somewhat similar people.

17 In short, you are entitled to consider eyewitness  
18 testimony, you are entitled to convict on the basis of eyewitness  
19 testimony, but you ought to be careful and consider conscientiously  
20 the hazards involved in relying on eyewitness testimony.

21 Now, let's say a word about the bank surveillance  
22 film. You had an opportunity to see that film for yourselves  
23 and there is also in evidence some glossy prints of some of the  
24 frames that have been enlarged. There will be in the jury room  
25 the projector and the film strip, and I am not sure whether they